TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible]

No. [illegible]

BRIMSTONE RAILROAD & CANAL COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, KANSAS CITY SOUTHERN RAILWAY COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 240

BRIMSTONE RAILROAD & CANAL COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, KANSAS CITY SOUTHERN RAILWAY COMPANY, ET AL.

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[fols. 1a & 2]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION

BRIMSTONE RAILROAD & CANAL COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, and KANSAS CITY SOUTHERN RAILWAY COMPANY, Defendants

BILL OF COMPLAINT—Filed February 15, 1926

The bill of complaint of the Brimstone Railroad & Canal Company, (hereinafter referred to as the Brimstone Railroad), against the United States of America, the Louisiana Western Railroad Company, and the Kansas City Southern Railway Company:

I

Petitioner, Brimstone Railroad, respectfully shows that it is a corporation duly organized and existing under the laws of the State of Louisiana, with its domicile and principal place of business at Sulphur Mine, Calcasieu Parish, [fol. 3] said State, and in the Western District thereof, and a citizen of said State, and by its charter is duly empowered to acquire rights of way, construct, maintain and operate railroads and branches thereof in the State of Louisiana, as a common carrier of property, and to acquire by lease or otherwise and to operate as a common carrier, railways and trains, and to do all things necessary and proper which may be incident to the above mentioned purposes, and it now has and exercises franchises, powers, rights, privileges and immunities conferred by law on corporations created and organized for railroad purposes. Complainant also maintains an office at 33 Rector Street, in the City of New York, N. Y.

II

That complainant, the said Brimstone Railroad, operates a line of railroad in the southwestern part of the State of Louisiana, about twelve (12) miles west of Lake Charles.

The total mileage owned and operated by the Brimstone Railroad & Canal Company is as follows:

Main Line	7.39
Spurs and sidings	1.68
Total	9.07

In addition, the Brimstone Railroad operates over .80 mile of track belonging to the Louisiana Western Railroad Company under trackage rights at the Louisiana Western Railroad interchange, and operates over 3.88 miles of track belonging to the Union Sulphur Company, of which the [fol. 4] maintenance, rental and taxes should properly be, has been, and is borne in part by the Brimstone Railroad.

A map showing the Brimstone Railroad and its connections, and the tracks of the Union Sulphur Company used jointly by the Brimstone Railroad, is annexed hereto as Exhibit "A" and made part hereof in full.

III

The said Brimstone Railroad is engaged in both interstate and intrastate commerce, and connects with the Louisiana Western Railroad at Brimstone Junction, Louisiana, and with the Kansas City Southern Railway at Mossville, Louisiana. Over ninety (90) per cent of the traffic handled by the Brimstone Railroad in connection with its connecting lines is interstate traffic, interchanged with its connecting lines.

IV

The said Brimstone Railroad is subject to and complies with the rules and regulations promulgated by the Interstate Commerce Commission, the Louisiana Public Service Commission, and with all the laws of the State of Louisiana and of the United States relating to common carriers by railroad.

It publishes and files both with the Interstate Commerce Commission and with the Louisiana Public Service Commission, a full line of class and commodity rates between points on its own line in Louisiana, and concurs [fol. 5] in, publishes and files joint tariffs applying between points on its own railroad and points on connecting lines in Louisiana, and publishes and files with the Interstate Commerce Commission a full line of joint class and commodity rates from and to all interstate territory via both connecting lines, and other lines participating therein.

V

Complainant, said Brimstone Railroad, shows that the matters in controversy in this suit and the questions involved therein, arise under the Constitution and laws of the United States, that the matter in controversy exceeds the sum or value of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, and that complainant has no adequate remedy at law.

VI

Complainant shows that the Interstate Commerce Commission, upon its own motion, without complaint filed, and without having established joint through rates between points on the Brimstone Railroad and points on the Louisiana Western Railroad, the Kansas City Southern Railway, or any other points, as provided in Section 15 of the Interstate Commerce Act, by order dated August 1, 1921, entered upon an investigation into and concerning the justness, reasonableness and equitableness of the divisions received by the Brimstone Railroad & Canal Company out of the joint interstate rates applicable to the transportation of property over said railroad, which proceeding is entitled "Docket No. 12,869, Divisions Received by the Brimstone [fol. 6] Railroad & Canal Company." The said order was served upon the Brimstone Railroad, and its connections, the Louisiana Western Railroad Company, and the Kansas City Southern Railway Company, respondents therein, and was and is as follows:

"The Commission having under consideration the rates on crude and fuel oil, in tank cars, from certain Texas

points to Sulphur Mine, La., for application over the Southern Pacific or Kansas City Southern Railroad in connection with the Brimstone Railroad & Canal Company, and on shipments of sulphur, in carloads, from Sulphur Mine over the said railroads:

It is Ordered, That the Commission upon its own motion enter upon an investigation into and concerning the justness, reasonableness, and equitableness of the divisions received by the Brimstone Railroad & Canal Company out of the joint rates applicable to the transportation of property over said railroads.

It is Further Ordered, That the Brimstone Railroad & Canal Company, the Southern Pacific Company, and the Kansas City Southern Railway Company be, and they are hereby made respondents to this proceeding, and that a copy of this order be served upon such respondents; and that notice of this proceeding be given to the general public by depositing a copy of the order in the office of the Secretary of the Commission at Washington, D. C.

And it is Further Ordered, That this proceeding be assigned for hearing at such time and place as the Commission may hereafter direct."

VII

That prior to the hearings held in the said proceedings, the said Interstate Commerce Commission addressed to the said Brimstone Railroad, a questionnaire dealing with the subject matter contained in said order of investigation, [fol. 7] which was fully answered by the Brimstone Railroad and the said answers were filed with the Commission. Certified copies of the said questionnaire and the answers thereto will be produced on the hearing hereof.

That hearings pursuant to said order were held at various times and places, and on the 4th day of April, 1922, the Interstate Commerce Commission made a report and rendered an opinion which will be found in the 68th Interstate Commerce Commission Reports at page 375, et seq., reference to which is hereby made. In the said report the Interstate Commerce Commission found the said Brimstone Railroad to be a common carrier of property subject to the Interstate Commerce Act, entitled to lawfully participate in joint rates with other common carriers, or have

its charges on interstate shipments absorbed under appropriate tariff provisions.

The record in the said proceeding was by direction of the Commission held open for a period of ninety (90) days from the date of service thereof, during which respondents were required to make certain cost studies of the cost to the Brimstone Railroad, only, of the cost of performing its common carrier service, and the said report further required that within sixty (60) days from the service of the said order the said cost studies should be submitted to the Commission with copies thereof to the parties to the said proceeding. Certified copy of said report and order of the Commission is annexed hereto as Exhibit "B", and made a part hereof as fully as it set out in full herein, [fol. 8] for the limited purpose of proving the contents thereof, and the specific purpose of attacking the said order in so far as it purports to deal with or require retroactive adjustments to be made by the Brimstone Railroad in its divisions received, out of joint through rates. No cost study or investigation of the amount necessary to pay the respective operating expenses, taxes and a fair return on their railway properties used for and used in the service of transportation of the said Louisiana Western Railroad Company, or the said Kansas City Southern Railway Company, was made by the Commission.

VIII

That the said cost studies as directed by the said Commission were made by the respondents in the said proceeding and filed with the Commission and served upon all parties to said proceeding, and were made in the only manner in which they could have been made in order to comply with the directions of the Commission in its said report dated April 4, 1922. Further hearings were thereafter had at Memphis, Tennessee, November 14th and 15th, 1922, and subsequently a tentative report was prepared by an Examiner of the Commission and served upon the said Brimstone Railroad and the other parties to the proceeding. Exceptions were filed by the parties to the report proposed by the Examiner, and the case was orally argued before the Commission on July 11, 1923, at Washington, D. C.

[fol. 9] The said proposed report did not propose to make the divisions of the joint rates therein found reasonable by the Examiner, retroactive, and were proposed to be applied only on future traffic moving over the said Brimstone Railroad and its said connections. No party to the said proceeding before the Commission excepted to the said proposed report on the ground that the divisions proposed therein were not to be made retroactive, and said Brimstone Railroad was never put on notice by the Commission, prior to its said order dated March 10, 1924, that it intended to make retroactive its order fixing divisions of joint rates to be received by the Brimstone Railroad.

IX

That after considering the case from July 11, 1923, to March 10, 1924, the said Commission, on April 4, 1924, served upon the Brimstone Railroad and other parties to said proceedings, its report, opinion and order dated March 10, 1924, which report, opinion and order will be found in the 88th Interstate Commerce Commission Reports at page 62, et seq., reference to which is hereby made. The said supplemental report reiterated the finding in the original report, 68 I. C. C. 375, that the Brimstone Railroad & Canal Company was a common carrier of property subject to the Interstate Commerce Act, entitled to lawfully receive just and reasonable divisions of rates jointly established by it and its trunk line connections under appropriate tariff provisions, and prescribed what it alleged to be just, reasonable and equitable divisions as to the [fol. 10] Brimstone Railroad & Canal Company during the period from August 1, 1921, to but not including July 1, 1922, and on and after July 1, 1922. A certified copy of said supplemental report and order of the Commission is annexed hereto as Exhibit "C" and made a part hereof as fully as if written in full herein.

X

That immediately after the receipt of the said order, complainant, the Brimstone Railroad, made a check of the movement of freight traffic over its said railroad on which it has made its interline settlements with its connections,

the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, during the periods for which divisions of joint through rates were prescribed in the said order and applied thereto the divisions which were so ordered by the Commission, and found that the said divisions of joint rates prescribed by the Commission would not have produced and did not produce sufficient revenue on freight traffic actually handled from and after August 1, 1921, to pay the operating expenses and taxes of the Brimstone Railroad and a fair return on its common carrier property, from and after said date.

Thereafter, said Brimstone Railroad, complainant, prepared and filed with the Interstate Commerce Commission on April 15, 1924, its application for a rehearing, supporting the same with figures taken from its records, books and accounts showing the consequences which would result [fol. 11] from the application of the said divisions prescribed by the Commission in its order dated March 10, 1924, as applied to the movement of freight traffic over the Brimstone Railroad on and after August 1, 1921, a copy of which application to the said Commission is hereto annexed as Exhibit "D" and made a part hereof as fully as if written in full herein.

The Brimstone Railroad thereafter filed exceptions to the jurisdiction of the Commission to make its order or orders prescribing divisions to be received by the Brimstone retroactive. A certified copy of said exceptions is attached hereto as Exhibit "E" and made part hereof as fully as if written in full herein.

That, subsequently, upon consideration of the record and of the Brimstone Railroad's petition for further hearing, the said proceeding was reopened, and the Commission ordered its representatives to conduct a cost study, which cost study was made as of the year ended December 31, 1923, and for no other period. Copies of the exhibits prepared by the Commission's representatives were served upon the Brimstone Railroad, and other respondents, in order that they might prepare rebuttal exhibits for introduction at the last hearing before the Commission. Rebuttal exhibits were prepared by representatives of the Brimstone Railroad, copies were furnished the Commission, and they were introduced in evidence at the hear-

ing held at New Orleans, Louisiana, on May 4th and 5th, 1925. The said exhibits filed by complainant, and the [fol. 12] testimony in support of same, pointed out certain errors in the exhibits prepared by the Commission's representatives, which errors the Commission failed to consider as hereinafter appears. Certified copies of said exhibits and testimony will be produced upon the hearing hereof.

That after the said hearing briefs were filed with and arguments made before the Commission, and thereafter, on December 14, 1925, said Commission made and entered a third report, opinion and order in the said case entitled "Interstate Commerce Commission, No. 12,969, Divisions Received By Brimstone Railroad & Canal Company," and served copies of the same upon the said Brimstone Railroad and other respondents on January 19th, 1926.

XI

That said order dated December 14th, 1925, omitting the report made and opinion rendered in connection therewith, in words and figures, is as follows:

"It appearing, That on April 4, 1922, and March 10, 1924, the commission entered its report, and its report and order on further hearing, respectively, in the above-entitled proceeding, and that on May 5, 1924, it postponed the effective date of said order until the further order of the commission, and reopened the proceeding for the purpose of enabling the commission to conduct a cost study and for such further hearing as the commission might direct;

It further appearing, That such further hearing has been had, and the commission having, on the date hereof entered its report on said further hearing containing its findings of fact and conclusions thereon, which said report, and the reports of April 4, 1922, and March 10, 1924, except as modi- [fol. 13] fied herein, are hereby referred to and made a part hereof:

It is ordered, That said order of March 10, 1924, be, and it is hereby, vacated and set aside.

It is further ordered, That for the period from August 1, 1921, to but not including July 1, 1922, the divisions of interstate joint rates received by the Brimstone Railroad &

Canal Company, hereinafter termed the Brimstone, on freight traffic interchanged with the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, hereinafter termed the connecting lines, shall be adjusted so as not to exceed the following amounts:

From the Louisiana Western Railroad Company:

One all carload traffic, $7.22 per car; on merchandise, less than carloads, 11.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $8.89 per car; on merchandise, less than carloads, 15.5 cents per 100 pounds.

It is further ordered, That on and after July 1, 1922, the divisions of interstate joint rates received by the Brimstone on freight traffic interchanged with connecting lines shall be adjusted so as not to exceed the following amounts:

From the Louisiana Western Railroad Company:

On all carload traffic, $6.50 per car; on merchandise, less than carloads, 10.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $8 per car; on merchandise, less than carloads, 14 cents per 100 pounds.

And it is further ordered, That this order shall take effect as of August 1, 1921, and shall continue in force until the further order of the Commission."

As will be more specifically shown by reference to said report, opinion and order, certified copy of which, marked [fol. 14] Exhibit "F," is attached hereto and made part of this bill for the limited purpose of showing its contents, and for the specific purpose of attacking the same.

XII

Complainant, Brimstone Railroad, further shows that the Louisiana Western Railroad Company and the Kansas City Southern Railway Company were respondents in said proceedings before the Commission and are parties thereto. The said Louisiana Western Railroad is a corporation organized under the laws of Louisiana, a common carrier

engaged in the transportation of passengers and property both interstate and intrastate, having an office at Houston, Texas, and New Orleans, Louisiana, and the Kansas City Southern Railway Company is a corporation organized under the laws of the State of Kansas, engaged in the transportation of passengers and property both interstate and intrastate, having its principal office at Kansas City, Missouri, and both of said companies compete for freight traffic originating and destined to points on the said Brimstone Railroad. Both of these said lines, namely, the Louisiana Western Railroad, and the Kansas City Southern Railway, connect with the Brimstone Railroad, as aforesaid, and are the only railroad connections which said Brimstone Railroad has. The said Louisiana Western Railroad Company, (Southern Pacific), and the said Kansas City Southern Railway Company, took part in all proceedings before the Interstate Commerce Commission in its said Docket No. 12,989, Divisions Received by the Brimstone Railroad & [fol. 15] Canal Company, and introduced evidence in justification of the divisions allowed by each of them severally to the Brimstone Railroad & Canal Company.

Complainant further shows that the divisions received by said Brimstone Railroad were originally established by mutual agreement between said Brimstone Railroad and said Louisiana Western Railroad Company, and the said Kansas City Southern Railway Company, and such agreements were in effect on February 29th, 1920, and on the date of the order of the Commission of August 1, 1921, instituting said investigation. Neither of the said connections have ever complained against said divisions. That the said agreements between the Brimstone Railroad and its connecting lines, Louisiana Western Railroad Company and Kansas City Southern Railway Company, were and are legal and binding contracts. Certified copies of said divisions agreements will be introduced on the trial hereof.

XIII

Complainant further shows that all of its divisions of joint rates and charges which were in effect on February 29th, 1920, were thereafter changed by mutual agreement between the interested carriers, and not by Federal an-

thority, and said agreements have been continually in effect at all times during the period of investigation made by the Commission in its said "Docket No. 12,969, Divisions Received by the Brimstone Railroad & Canal Company."

[fol. 16] XIV

Complainant further shows that all of the divisions received by the Brimstone Railroad from its connections have, by reason of Section 15 (a) of the Interstate Commerce Act, been proportionately reduced before collection, and the Government has, acting through the Interstate Commerce Commission, appropriated the excess net railway operating income of the Brimstone Railroad over 6 per centum for those years in which such excess was earned.

XV

Complainant further shows that the said Commission has not pursuant to Section 15, paragraph (3) of the Interstate Commerce Act, or otherwise after full hearing upon complaint, or upon its own initiative without a complaint, established joint rates or charges, applicable to the transportation of property, or the maxima or minima, or maxima and minima, to be charged, as provided in said Section 15, paragraph (3), and therefore, it is without power or authority to fix and establish the divisions thereof as thereinafter provided in Section 15, except as to the future, and then only in the manner provided in said Section 15, paragraph (6), of said act.

XVI

Complainant shows that the order instituting said investigation dated August 1, 1921, the report dated April 4, 1922, the report, opinion and order dated March 10, 1924, and the report, opinion and order dated December 14, [fol. 16a] 1925, hereinabove referred to, in so far as they determine or prescribe, or either of them determines or prescribes divisions to be received by the said Brimstone Railroad, are illegal, null and void and result in the taking of the said Brimstone Railroad's property without due process of law in violation of the Fifth Amendment to the

Constitution of the United States and should be set aside all for the following reasons, to-wit:

(a) That none of said orders, reports or opinions required the Interstate Commerce Commission to, and said Commission did not, investigate or determine the reasonableness or justness of said divisions or whether they were or would be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the carriers parties thereto and participating therein, and said Commission did not give consideration to any fact or circumstance which would entitle one of such carriers to a greater or less proportion than another carrier of the joint rate, fare or charge, as is required by Paragraph 6, Section 15, of the Interstate Commerce Act.

(b) That the Interstate Commerce Commission was and is, without jurisdiction, power or authority to determine or prescribe the divisions to be received by the Brimstone Railroad out of the joint rates, fares or charges received by the several carriers, except as between the carriers parties thereto and except after a hearing and investigation of operating expenses, taxes, and other facts and circum- [fol. 16b] stances connected with the operation of each of the carriers participating in such joint rate, fare or charge, as specifically set forth in said paragraph (6) of said Section 15.

(c) That the Interstate Commerce Commission was and is without power and authority to establish any divisions of joint through rates under Section 15, paragraph (6), of the Interstate Commerce Act, except after it has established joint through rates and charges for the transportation of property as provided in said Section 15, and particularly paragraph (3) thereof.

XVII

And, should it be held that the Interstate Commerce Commission did have jurisdiction, power and authority to determine and prescribe the divisions to be received by the Brimstone without complying with the provisions of paragraphs (1), (3) and (6) of said Section 15 of the said Interstate Commerce Act, which is always denied, then and in

that event, and in the alternative, complainant alleges that the said orders and findings hereinabove referred to are and will be illegal, null and void and result in the taking of the Brimstone's property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, and should be set aside all for the following reasons, to wit:

(a) That the said orders herein referred to and particularly the report, opinion and order of December 14, 1925, attempt to determine divisions to be received by the Brimstone from its connecting carriers prior to Decem- [fol. 17] ber 14, 1925, and subsequent to August 1, 1921, thereby prescribing divisions to be applied retroactively.

(b) That the Interstate Commerce Commission was and is without jurisdiction, power or authority to so prescribe and determine divisions to be applied retroactively for the reason that the joint rates, fares and charges of which the divisions received by the Brimstone Railroad form a part were not established pursuant to a finding or order of the Commission as is provided for by paragraphs (1), (2), (3) and (6), Section 15, of the Interstate Commerce Act.

XVIII

And, should it be held that the Interstate Commerce Commission did have jurisdiction, power and authority to determine and prescribe the divisions to be received by the Brimstone Railroad in violation of the provisions of paragraphs (1), (3) and (6) of said Section 15, of the Interstate Commerce Act, as set forth in the last two preceding paragraphs, then and in that event and further in the alternative, complainant alleges that said orders herein referred to and particularly the order of December 14, 1925, are and will be illegal, null and void and result in the impairment of the obligation of a contract and in the taking of the Brimstone Railroad's property without due process of law in violation of the Constitution of the United States, and the Fifth Amendment thereto, and should be set aside for the following reasons, to wit:

(a) That the divisions received by the Brimstone were and are established by agreement by and between the Brim-

[fol. 18] stone Railroad and the other carriers parties thereto, and were not established pursuant to a finding or order of the Interstate Commerce Commission.

(b) That the Interstate Commerce Commission was and is without jurisdiction, power or authority to so prescribe and determine divisions to be applied retroactively when such divisions are and have been agreed upon between the interested carriers and established by a contract between the carriers parties thereto.

(c) That in the event the Court should hold that Section 15, paragraph (6), of the Interstate Commerce Act is retroactive and authorizes the Interstate Commerce Commission to make divisions of joint through rates prescribed by it retroactive, in cases when the joint through rates of which such divisions form a part were not established pursuant to a finding or order of the Commission establishing joint through rates as elsewhere provided in said Section 15, or and authorizes the said Interstate Commerce Commission to disregard, set aside and annul divisions of joint through rates established by contract and substitute therefor other divisions, and require said divisions to be made retroactive, then said Section 15, paragraph (6), is unconstitutional, null and void in that it impairs and annuls the obligation of the contracts made and entered into between the Brimstone Railroad, complainant, and the Louisiana Western Railroad Company, and made and entered by and between the Brimstone Railroad, complainant, and the Kan-[fol. 18a] sas City Southern Railway Company, under and by virtue of which contracts the divisions received by the Brimstone Railroad & Canal Company prior to the adoption of the order of the said Commission dated December 14, 1925 and served upon the Brimstone Railroad & Canal Company and other respondents January 19, 1926, were paid, denies to the Brimstone Railroad, complainant, the equal protection of the laws, and takes its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

If construed as retroactive, the said Section 15, paragraph (6), of the Interstate Commerce Act, as amended by the Transportation Act, 1920 (41 Stat. L. 484), operates immediately, and by virtue of its own terms, to take

from complainant its vested right and title to its property, and transfers the same to its two connections, the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, defendants, without due process of law, and is, therefore, unconstitutional.

XIX

And should it be held that the Interstate Commerce Commission did have jurisdiction, power and authority to determine and prescribe divisions to be received by the Brimstone in violation of the provisions of paragraph (6) of Section 15 of the Interstate Commerce Act, which jurisdiction, power and authority are always denied, and if it should be held that Congress did have and exercise the power to annul the aforesaid contracts between the Brim- [fol. 18b] stone Railroad, complainant, and its connecting lines, retroactively, without violating complainant's vested rights, then and in that event, and further in the alternative, complainant alleges that the said orders herein referred to, in so far as they prescribe and determine divisions to be received by the Brimstone are and will be illegal, null and void, confiscatory, and result in the taking of the Brimstone Railroad's property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, all as is and will be more fully set out in detail in the following paragraphs of this Bill of Complaint.

XX

Complainant, Brimstone Railroad, shows that based on the divisions prescribed by the Commission in its said order dated December 14, 1925, the revenue which would have been received by the Brimstone Railroad & Canal Company from the Louisiana Western Railroad and from the Kansas City Southern Railway Company, would have been, and is less than the reasonable, just and proper operating expenses of the Brimstone Railroad during the period from August 1, 1921, to but not including July 1, 1922, and from July 1, 1922, to the present time, and especially for the entire period from August 1, 1921, to December 31, 1925.

Complainant shows that the adjustments required by said

reports and orders of March 10, 1924, and of December 14, 1925, made in its accounts for years and period preceding [fol. 19] its said order of December 14, 1925, are illegal, unreasonable and unjust. Nevertheless, in order to determine the results of applying to the Brimstone Railroad's operating expenses the adjustments which are indicated in the Commission's said order, complainant has applied the said adjustments to its operating expenses for the period from August 1, to December 31, 1921, inclusive, and for each of the years 1922, 1923, 1924 and 1925, and has ascertained the revenues it would have received and will receive, if said order is enforced.

(a) The total cost of operation, including return on investment on the basis of the Brimstone Railroad & Canal Company's book investment, less accrued depreciation and working capital, but including material and supplies, as allowed by and as resulting from the adjustments required by said order of December 14, 1925, for the period from August 1, 1921, to December 31, 1925, inclusive, was and is $689,541.93.

(b) The total revenue which will accrue to the Brimstone Railroad & Canal Company from divisions authorized in said order dated December 14, 1925, for the said period from August 1, 1921, to December 31, 1925, inclusive, was and is $624,199.84, as fully hereafter shown.

The deficit accruing to the said Brimstone Railroad under the illegal and unreasonable adjustments as required in the Brimstone Railroad's accounts during said period, and the revenues which will accrue upon said divisions, under said order of the Interstate Commerce Commission dated [fol. 20] December 14, 1925, was and is $65,342.09, all of which is shown in greater detail by the statement of operating expenses, (including a return on the book investment of the Brimstone Railroad of less than 6 per centum), and the revenue which will accrue under said order, and which will be fully shown on the trial hereof.

(c) Complainant further shows that its total cost of operation, including return on investment on the basis of cost of reproduction new, less depreciation, for the period from August 1, 1921, to December 31, 1925, inclusive, was

and is $902,133.38, and that as aforesaid the total revenue which will accrue to it from the divisions established by said Commission in its said order of December 14, 1925, was and is $624,199.84, resulting in a deficit to the Brimstone Railroad & Canal Company in its cost of operation, including a return on its railway property of less than 6 per centum per annum, for said period of $277,933.54, all of which will be fully shown on the trial hereof.

The Brimstone Railroad, complainant, further shows that for the year 1923, it paid Federal income taxes amounting to $10,876.34, and for the entire period from August 1, 1921, to December 31, 1925, it paid total Federal income taxes, including the amount paid for the year 1923, of approximately $40,000.00, which the Commission's experts, and the Commission in its said order of December 14, 1925, failed and refused to take into consideration, although required by said Section 15, paragraph (6), of said Interstate Commerce Act to do so. The said deficits in the ac- [fol. 21] counts of the Brimstone Railroad, as hereinabove set forth will be and are increased by the payment of the said Federal income taxes by approximately the sum of $40,000.00 for said period.

XXI

The Louisiana Western Railroad Company, (Southern Pacific), and the Kansas City Southern Railway Company in connection with the Brimstone Railroad, and in compliance with the requirements of the Interstate Commerce Commission in its said report dated April 4, 1922, 68 I. C. C. 373, 388, jointly made the necessary cost studies to show the cost of the service performed by the said Brimstone Railroad only, as directed by said Commission. That these cost studies relate to an entirely different period from the cost study of the Brimstone Railroad made by the Commission's representatives, which was for the year 1923, only.

XXII

Complainant, Brimstone Railroad, further shows that it uses jointly with the Union Sulphur Company certain yard tracks of the latter company, aggregating about 3.88 miles.

On January 1, 1923, a written agreement covering the joint use of the said tracks was entered into by the two companies whereby the Brimstone Railroad leased 2.76 miles of the said tracks at an annual rental of $3,185.98 and assumed the entire cost of maintenance of the said leased tracks. The said agreement provides that, in addition to the use of the said leased tracks, the Brimstone Railroad shall have the [fol. 22] right for the same consideration to use certain other tracks belonging to the Union Sulphur Company for the purpose of reaching various terminal facilities necessary and useful to and used by the Brimstone Railroad in its operations as a common carrier, but with the understanding that the Brimstone Railroad shall not be required to maintain any of the tracks aside from the 2.76 miles heretofore mentioned. The said agreement was entered into in good faith and in the exercise of proper discretion by the officers of the Brimstone Railroad, and upon terms mutually agreed upon.

That in the cost study made by the representatives of the Interstate Commerce Commission, the actual cost of maintaining said 2.76 miles of track leased by the Brimstone Railroad from the Union Sulphur Company and used by the Brimstone Railroad in its services as a common carrier, was found to be $9,474.20 for the last eleven months of 1923, and that this amount, together with an estimated amount of $750.00 for January of that year based on the average expenses for February and December, results in a total of $10,224.20, or an average cost of maintenance of $3,704.42 per mile of said 2.76 miles of track, for which amount of actual costs, the Commission substituted the theoretical cost of maintenance of said tracks of $7,491.30. That while the Commission's representatives reported the actual cost to the carrier of said maintenance, the Commission in its said report and order disregarded the evi- [fol. 23] dence of both its representatives and the carrier as to the actual cost and substituted the theoretical cost based upon certain alleged costs per mile of maintaining roadway and tracks of the Kansas City Southern Railway, the Louisiana Western Railroad, Morgan's Louisiana & Texas Railroad, the New Orleans, Texas & Mexico Railroad, and all class I railroads in the Western District, without introducing any evidence as to the conditions existing

on any of said railroads, and without showing that conditions on said railroads were similar to those on the Brimstone Railroad. The Commission on page 419 of its order says:

"The difference between the amount shown on the books of the Brimstone and the maximum normal expenditure of maintaining tracks of a similar character was deducted from the Brimstone's accounts."

which statement shows that the Commission considered the expense of maintaining the Brimstone Railroad's leased tracks as being comparable with normal expenditures for maintenance of tracks of other railroads, in direct and arbitrary disregard of the evidence showing that the conditions on said leased tracks of the Brimstone Railroad were not normal and without introducing evidence to show that the tracks for which the so-called normal expenditure was taken were similar in character to those of the Brimstone.

XXIII

Complainant further shows that on page 421 of its said report and order of December 14, 1925, the Commission allows a credit to operating expenses of $436.00 for salvage [fol. 24] value of cast iron wheels removed in 1923. Notwithstanding the fact that the Commission in its said report and order allows a credit to operating expenses of $436.00, the Commission deducts the sum of $3,450.00 from car expenses for repairs, whereas according to its said report it should have deducted only the sum of $436.00, which has resulted in an understatement by the Commission of the operating expenses of the Brimstone for the year 1923 of $3,014.00. The operating expenses as arbitrarily and illegally adjusted by the Commission's experts should therefore have been increased from $171,329.01, as shown on page 425 of its said order, to $174,343.01, in order to conform with its own findings, which amount as so adjusted is far below the actual, reasonable and proper operating expenses of the Brimstone Railroad in the year 1923, as elsewhere fully shown.

XXIV

That on page 425 of its said report and order dated December 14, 1925, the Commission says:

"The deductions from operating expenses proposed by our experts are as follows: $10,347.44 from maintenance of way and structures, $18,787.58 from maintenance of equipment, $13,277.86 from traffic expenses, and $3,999.67 from general expenses, or a total deduction of $46,412.55. This results in an allowance of $171,329.01 for total operating expenses for 1923, exclusive of tax accruals and joint facility and equipment rents."

Complainant shows that the said deductions made by the Commission are arbitrary, illegal and in disregard of the evidence; that they are based upon deductions founded upon [fol. 25] erroneous theories and deprive the Brimstone Railroad, complainant, of its reasonable operating expenses incurred in its services as a common carrier, and thereby takes its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

Complainant further shows that there is plain error in the aforesaid statement, as the evidence before the Commission plainly shows as follows:

The sum of $18,787.58 was not deducted by the Commission's experts from maintenance and equipment; that the sum of $46,412.55 was not the total deduction made by the experts of the Commission and neither of said amounts conforms to the evidence before the Commission, as will be pointed out in greater detail on the trial hereof.

XXV

Complainant further shows that taxes accrued and were paid by the Brimstone Railroad for the year 1923 amounting to $24,928.89, divided as follows:

State and Parish Taxes	$13,641.55
United States Government Taxes:	
Federal Income Tax	10,876.34
Capital Stock Tax	411.00

In its said report and order, the Commission has excluded from the accounts of the Brimstone Railroad for the year 1923, the Federal income tax and certain local taxes on land not used in common carrier operations, reducing the amount of taxes accrued and paid for the year [fol. 26] 1923 to $13,821.61. In failing to give consideration to the said Federal income taxes, the Commission has acted, and is acting arbitrarily, illegally and in violation of said Section 15, paragraph (6), of the Interstate Commerce Act, and thereby will deprive complainant of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

XXVI

Complainant shows that on page 426 of the said report and order, of December 14, 1925, the Commission states that:

"The estimated amount of working capital advocated by the Brimstone as well as by our experts must be rejected. The Brimstone's estimate of necessary material and supplies must likewise be rejected, but the amount on hand as shown by its figures will be allowed."

On December 31, 1923, the complainant had cash on hand as working capital $5,076.30, and material and supplies on hand valued at $8,908.81, which latter amount was increased by the Commission's experts to $12,014.05. As hereinabove shown, the Commission's own experts corrected the Brimstone Railroad's accounts by transferring from maintenance of equipment, car repair account, to material and supplies account, the sum of $3,105.24. The Commission in its said report and order has arbitrarily disregarded the evidence introduced by the Brimstone Railroad and by the Commission's experts, and allowed the complainant only the sum of $12,014.05, being only the [fol. 27] value of material and supplies on hand, with no allowance whatever for working capital.

Complainant further shows that the reasonable amount necessary to cover working capital, material and supplies for the year 1923 should be, was, and is $28,913.00.

XXVII

Complainant further shows that the experts of the Commission in said cost study recognized the right of the complainant to include in its cost of reproduction new, cost of reproduction new, less depreciation, and in the value of its railway properties held for and used in the service of transportation as a common carrier, a sum for working capital and material and supplies, and the Commission's experts found, reported and testified that the following amounts were shown by the carrier's books as of December 31, 1923, and should be included in the value of the complainant's property upon which it was, and is entitled to a fair return, as working capital and material and supplies, viz:

Cash on hand (working capital), December 31, 1923	$5,076.30
Material and supplies on hand, December 31, 1923	8,908.81
Total	$13,985.11

The Commission's experts further found, reported and testified that the sum of $3,105.24 should be transferred from operating expenses maintenance of equipment car repairs, to the material and supplies account. The adjustment thus indicated by the Commission's experts if [fol. 28] and when made, will result in a total of $17,090.35 as of December 31, 1923, for working capital and material and supplies. The Commission has disregarded the evidence of its own experts by excluding and rejecting from the carrier's accounts as of December 31, 1923, the sum of $5,076.30, which was the cash on hand on that date to be used, and necessary, for working capital as estimated by the Commission's experts. In its said report and order dated December 14, 1925, the Commission has arbitrarily and illegally refused and denied to the complainant any amount whatever as working capital and has thereby taken, and seeks to take, complainant's property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

XXVIII

In its said report and order the traffic expenses of the Brimstone Railroad have been reduced $13,277.86, and the general expenses have been reduced $3,999.67, for the year 1923. The accounts of the Brimstone show a total traffic expense of $16,704.56, and general expense of $24,559.86 in 1923. The said reduction in traffic expenses and general expenses as made by the Commission in its report is arbitrary and illegal, is based upon theoretical estimates of the cost of other railroads in various parts of the United States, the conditions on which were not shown to be similar to the Brimstone Railroad. The traffic expenses and the general expenses, as shown by the Brimstone Railroad's accounts, [fol. 29] as aforesaid, were actually paid by it in 1923, and were reasonable and necessary expenses in its operations as a common carrier.

The said traffic expenses and general expenses incurred and paid by the Brimstone Railroad, as shown by its books and accounts were reasonable and necessary traffic and general expenses, and were the result of the business judgment of the officers of the Brimstone Railroad. In refusing to allow said traffic expenses and general expenses, incurred and paid, the Commission has acted arbitrarily, unreasonably and in disregard of complainant's right to conduct its business in accordance with approved business methods and railroad practices, and in eliminating such reasonable traffic and general expenses from complainant's accounts, the Commission has deprived and will deprive complainant of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

XXIX

Complainant, Brimstone Railroad, shows that by Section 15a of the Interstate Commerce Act, the United States Government has appropriated for public use one-half the excess earnings of the Brimstone Railroad over a six (6) per cent return on the value of its property held for and used in the service of transportation as a common carrier, and the Interstate Commerce Commission has demanded, and will demand that complainant remit to it one-half of any excess earnings over and above six (6) per cent on the

value of said property so held and used. Any such excess [fol. 30] as may have been earned, or may hereafter be earned by the Brimstone Railroad on the basis of divisions of joint rates which it has received on and after August 1, 1921, to the present date, and which it is now receiving, from its connections, is when taken by the Government in accordance with said act, pro tanto a reduction of its said divisions of joint rates, and one-half such excess has been or will be paid to the Government, and one-half is now or will be held in a reserve fund as provided in Section 15a of the Interstate Commerce Act.

The Brimstone Railroad, complainant, has, on the demand of the Interstate Commerce Commission, paid to the Government under the provisions of Section 15a, paragraph (6), for the year 1921, the sum of $5,774.73, for the year 1922, the sum of $21,731.40, and for the year 1923, the sum of $15,136.08, the payments of which respectively materially reduce its divisions of joint rates for the years 1921, 1922 and 1923, and the payment of which for subsequent years, will substantially reduce both its divisions of joint rates and its revenues, if, at any time its net operating income should exceed six (6) per cent on the value of its railway property held for and used in the service of transportation. The said above amounts of excess net railway operating income for the years 1921, 1922 and 1923, having been paid to the Government, on demand of the Interstate Commerce Commission out of the earnings of the Brimstone Railroad for those years, respectively, and for the repayment of which by the Government to the Brimstone Railroad no [fol. 31] provision is made, should be added to the deficit in the Brimstone Railroad's accounts for the years 1921, 1922 and 1923, which would further increase the net deficit of the said Brimstone, as a consequence of the Commission's said order dated December 14, 1925, by said amounts and is a taking of complainant's property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

XXX

Complainant, Brimstone Railroad, further shows that it has practically no local traffic, and that substantially all,

or over ninety nine (99) per cent of its entire freight revenue is derived from its divisions of joint rates.

XXXI

Complainant, the Brimstone Railroad, shows that as of December 31, 1921, it owned and used in the service of transportation, as a common carrier, railway properties, the original cost of which was $522,987.31, which investment represented the actual cost of physical property only, including material and supplies, nothing being included for anything intangible, which figure is substantially less than the fair and reasonable value of said property as of December 31, 1921, as will more fully appear.

Complainant further shows that as of December 31, 1922, it owned and used in the service of transportation as a common carrier railway properties, the original cost of which was $544,282.59, which investment represented the actual cost of physical property only, and material and supplies, [fol 32] nothing being included for anything intangible, which amount is substantially less than the fair and reasonable value of said property as of December 31, 1922, as will more fully appear.

Complainant, Brimstone Railroad, further shows that it owned and held for use in the service of transportation as a common carrier, railway properties, the original investment cost of which was as of December 31, 1923, $536,735.56; as of December 31, 1924, $541,243.24; as of December 31, 1925, $552,580.89, which investment costs represented the actual costs of its physical property only, including material and supplies, but not including anything for working capital or going concern value, which investment costs as of each of the dates stated was and is substantially less than the fair and reasonable value of said property as will more fully appear.

XXXII

Complainant, Brimstone Railroad, shows that the value of its property held for and used in the service of transportation as a common carrier based upon the cost of reproduction new, 1922 prices, as of December 31, 1921, exclusive of the right of way for its canal, was in excess of $677,880.50, and the cost of reproduction new, less deprecia-

tion was in excess of $538,616.61. The value of the railway property of the Union Sulphur Company used by the Brimstone Railroad in the service of transportation as a common carrier as of December 31, 1921, based on cost of reproduction new on the 1922 price level, was in excess [fol. 33] of $84,503.00, and the cost of reproduction new, less depreciation, was in excess of $57,913.00.

The Brimstone Railroad purchased additional equipment in the year 1922 costing $23,000.00, and the value of its property held for and used in the service of transportation as a common carrier on December 31, 1922, based on cost of reproduction new, 1922 prices, and additions and betterments during the year 1922, was in excess of $700,900.50, and the cost of reproduction new, less depreciation, was in excess of $557,686.71. In addition thereto said Brimstone Railroad used in the service of transportation in the year 1922 as a common carrier, railway property of the Union Sulphur Company, the value of which was in excess of $84,503.00, and the cost of reproduction new, less depreciation was in excess of $57,913.00.

XXXIII

The Brimstone Railroad, complainant, further shows that the value of its property held for and used in the service of transportation as a common carrier based upon the cost of reproduction new on 1923 prices as of December 31, 1923, was in excess of $590,733.00 and the cost of reproduction new less depreciation was in excess of 404,772.00. That in addition to the cost of reproduction new of its railway properties held for and used in the service of transportation as a common carrier the Brimstone Railroad as of December 31, 1923, was entitled to the sum of $28,913.00 to cover working capital, including material and [fol. 34] supplies, and to $43,930.00 as going concern value, making its total value as of December 31, 1923, in excess of $663,576.00 without deducting depreciation, and after deducting depreciation, its total value was in excess of $533,615.00 on the said date.

Complainant further shows that as of December 31, 1924, the cost of reproduction new, of its said property was and is $642,843.00, and the cost of reproduction new, less depreciation, was and is $517,443.00, and as of December 31,

1925, the cost of reproduction new was and is $635,843.00, and the cost of reproduction new, less depreciation, was and is $511,983.00. The total fair value of complainant's said property as of December 31, 1924, and 1925, respectively, was in excess of the cost of reproduction, less depreciation, as hereinabove shown.

XXXIV

Complainant further shows that in the cost study made by the Commission for the year 1923, the Commission's experts took the books figures or estimates as to actual investment, material and supplies, and cash on hand, as of December 31, 1923, and augmented them $5,000.00 on account of rehabilitation of two second-hand locomotives, $1,723.62 on account of excess cost of 138 steel car wheels over estimated current cost of cast iron wheels, and $3,105.24 on account of car material and supplies, resulting in a total book investment of $551,640.70; and from this amount the Commission's experts deducted accrued depreciation of $13,928.13, on road and $154,133.84 on equip- [fol. 35] ment, as shown by complainant's books, leaving an investment cost, less depreciation of $383,578.73. On the said sum of $383,578.73, the Commission's experts computed a return of 5.75 per centum, as a fair return to the complainant.

Complainant shows that said sum of $383,578.73 is far below the fair and reasonable value of its property held for and used in the service of transportation as common carrier as of December 31, 1923, and as of December 31, 1921, 1922, 1924 and 1925, and for the period from August 1, to December 31, 1921, respectively, as more fully appears.

The Commission in its said report, opinion and order of December 14, 1925, arbitrarily reduced the book investment of the Brimstone Railroad as found, reported and testified to by its own experts by excluding therefrom the sum of $5,076.30, being the amount of cash on hand as working capital as of said date, and thereby arbitrarily and illegally seeks and sought to establish a value for the Brimstone Railroad's property as of December 31, 1923, far below its actual true value, as more fully appears.

XXXV

Complainant further shows that the Commission has computed complainant's return at the rate of 5.75 per centum per annum, on the basis of the book cost of the property, less accrued depreciation, which is far below a fair and just return for complainant to earn upon the fair value of its property. The Commission has fixed the rate of 5.75 per [fol. 36] centum as a basis for a fair return on the aggregate property value of the carriers as a whole in various rate groups as established by it. Such rate of return is not, however, a fair rate of return on the individual property of complainant as contemplated by Section 15a, paragraph (6), of the Interstate Commerce Act, which provides for the payment to the Commission by the carrier of one-half of any excess over six (6) per centum of the value of the railway property held for and used in the service of transportation, and requires the carrier to place the remaining one-half of its excess railway operating income in a reserve fund to be established and maintained by it, until a sum equal to five (5) per centum of the value of its railway property has been accumulated. The carrier is permitted by paragraph (8) of said Section 15 (a) to use for any lawful purpose the portion of its excess income it is permitted to retain under said paragraph (6), of Section 15 (a), after the reserve fund shall equal five (5) per centum of the value of its railway property determined in the manner provided in paragraph (4) of Section 15 (a) of said act.

XXXVI

Complainant, Brimstone Railroad, further shows that the Commission in its said report and order dated December 14, 1925, has not included any sum for going concern value, although an amount equal to 7.5 per cent of the cost of reproduction new should be added to its value for going concern value. In rejecting and disallowing any amount for [fol. 37] going concern value the said Commission has acted illegally and arbitrarily and in disregard of the fact that on December 31, 1921, and during each of the years ended December 31, 1922, 1923, 1924, 1925 and at the present time the Brimstone Railroad, complainant, was and is a going concern, earning revenues under joint through rates, is

solvent, and is entitled to a value as a going concern of not less than $43,930.00.

Complainant further shows that the said Commission has disallowed any item for going concern value on the theory that the dividends paid by the Brimstone Railroad in certain years were unjust, unreasonable and excessive, whereas during the entire period of its operations from 1906 to 1923, inclusive, the Brimstone Railroad has paid dividends out of its accumulated surplus, which in the aggregate amounted to an average of less than ten per cent per annum on its actual investment in its property.

The said report and order on page 431 states:

"Such going concern value as may represent an asset has been included, *we believe*, in the figures dealing with cost of reproduction new less depreciation," (our italics), which statement is in disregard of the evidence and based upon the incorrect assumption that the Commission has given consideration to the cost of reproduction new and cost of reproduction new, less depreciation, for each of the years 1921, 1922, 1923, 1924 and 1925, respectively, whereas the fact is, as shown by the report of the Commission, that the book cost was used by the Commission's [fol. 38] representatives and accepted by the Commission as the fair value of the property as of each of these respective dates, which said book cost is far below the fair reasonable value of the property, and far below the cost of reproduction new and the cost of reproduction new, less depreciation as of any of the dates under consideration, and does not include any amount for going concern value.

XXXVII

Complainant, the Brimstone Railroad, shows that it is entitled to charge $4,981.58 annually to provide for amortization of investment in road accounts. The amount on which the amortization was based is arrived at by taking the investment account and deducting therefrom the sum of accrued depreciation and the estimated salvage value from each item and of amortizing the remainder of its investment in road and equipment over a period of twenty-one years, which is the definite life of the Brimstone Railroad.

Complainant further shows that it will have served the purpose for which it was constructed and will cease operations on December 31, 1926, because of insufficient tonnage after that date to support its railroad, and that unless its property is amortized before that date, its investors will not have received the return of their investment and a fair return upon the fair and reasonable value of the property held for and used in the service of transportation as a common carrier.

[fol. 38] The Commission has illegally, arbitrarily, and in disregard of the evidence refused to allow the amount claimed by the Brimstone Railroad or any amount whatsoever as an annual sum representing amortization of the investment in road over a period of twenty one years, which the Brimstone Railroad is entitled to charge in its operating expenses annually.

The said order is further arbitrary, illegal and void because it not only denies to complainant its constitutional right to protect its investment by making and setting up in its accounts a reasonable charge for amortization of its investment in its property, less depreciation on, and estimated salvage value of, such property, but also denies to complainant the right to earn a fair rate of return upon the fair value of its railway property held for and used in the service of transportation as a common carrier for the aforesaid period from August 1, to December 31, 1921, inclusive, and for each of the years ended December 31, 1922, 1923, 1924 and 1925, and the present year.

XXXVIII

Complainant further shows that the Commission has failed to find the value of the property of the Brimstone Railroad & Canal Company used in the service of transportation as a common carrier, as provided by Section 19 (a) of the Interstate Commerce Act. It has arbitrarily and illegally used as a basis for the unjust and unreasonable divisions which it has prescribed effective as of August 1, 1921, the book cost or investment of said properties as [fol. 40] of December 31, 1923, less the amount of accrued depreciation, namely, the sum of $3,831,578.75, which amount is far below the reasonable value of the complainant's

property as of December 31, 1921, December 31, 1922, December 31, 1923, December 31, 1924, December 31, 1925, and as of the present time. In using the said investment cost, less depreciation, as the basis for computing a fair return the said Commission has failed to give due weight to the cost of reproduction new and the cost of reproduction new less depreciation as of any of the dates or periods named, and did not accord proper, if any, weight to the greatly enhanced cost of construction in 1921, 1922, 1923, 1924, 1925 and at the present time, over those prevailing about 1914 and before the War. The Commission has arbitrarily disregarded complainant's detailed estimated cost of the reproduction new and reproduction new, less depreciation, based on 1921 prices, 1922 prices and 1923 prices, notwithstanding the fact that complainant's evidence as to the cost of reproduction new and cost of reproduction new less depreciation as of the dates and periods named was not impeached or attacked, and no estimate of the cost of reproduction new, or the cost of reproduction new, less depreciation, was made by any representative of the Commission.

XXXIX

Brimstone Railroad, complainant, further shows that the Commission's said order dated December 14, 1925, is based upon an arbitrary and illegal classification of the services [fol. 41] of the Brimstone Railroad as between common carrier and intra plant service.

The Brimstone Railroad caused a study to be made by expert railway operating officials of the services it performed and allocated the time according to recognized operating rules and principles on railroads serving industries in the same general territory as the Brimstone Railroad. The Commission offered no evidence on this point by a qualified transportation officer or by any expert having had previous experience in operating railroads. The Brimstone Railroad receives and delivers cars from and to its connections and places the said cars on the loading tracks of the Union Sulphur Company, and also on the storage tracks. The cars on the storage tracks are held until they are required to be placed for loading on the loading tracks. The loaded cars are pulled from the loading tracks and are

either placed on the storage tracks or are taken out in a direct line haul to the interchange tracks of the connecting railroads, all of which is common carrier service for which the Brimstone Railroad is entitled to reasonable and just compensation.

The Commission in its said order recognized that the holding of the cars at a place in the plant where loading is impossible is not spotting cars for loading, but on the theory that "if the plant requires the empties to be placed in this manner for its convenience, the additional move is a plant service," did not include in the cost of operation of the Brimstone Railroad a sufficient amount to cover the cost of placing cars for loading and removing them after [fol. 42] they were loaded. Complainant shows that all services of a similar character performed by the Brimstone Railroad and other common carriers is included in the line haul rates and is a common carrier service.

In the classification of the service of the Brimstone Railroad as between common carrier and intra-plant service, the Brimstone Railroad charged to common carrier service, instead of to intra-plant service, the placing of the cars for loading on the track upon which they were to be loaded, and the pulling of those cars off the track after they had been loaded. The Commission has arbitrarily disregarded and eliminated from the accounts of the Brimstone the cost of performing the said car spotting services and has thereby reduced the operating expenses of the Brimstone by the amount of $21,177.46, which is greatly in excess of the proper amount to be so deducted.

Complainant further shows that the total estimated cost of the intra-plant switching performed by the Brimstone Railroad for the Union Sulphur Company during the year 1923 was as follows:

Operating Expenses	$8,344 53
Taxes	205 19
Interest on investment	553 27
Total	$9,102 99

In arbitrarily disregarding the evidence of the expert transportation officers as to the classification between the common carrier and intra-plant service of the Brimstone

Railroad's operations, and in rejecting the said estimated cost of $9,102.39 of performing the intra plant switching [fol. 43] and substituting therefor the unreasonable and excessive cost of $21,177.46, as the cost of said service, the Commission has acted illegally, and its said action amounts to the taking of complainant's property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, all of which will be shown in greater detail on the hearing hereof.

XI.

Complainant further shows that in the said report and order dated December 14, 1925, it is stated on page 427 thereof that "a total of 24,620 loaded cars was interchanged with the Brimstone's two connections in 1923. This figure includes less than carload freight at an assumed average weight of 5 tons per car." That in making its computations as to the average cost of all cars interchanged during 1923, the Commission used as a basis the said 24,620 loaded cars. Complainant further shows that in the exhibits prepared and filed by representatives of the said Commission, it is shown that of the said 24,620 cars interchanged by the Brimstone with connecting carriers, 19,927 cars were interchanged with the Southern Pacific, and 4,693 cars were interchanged with the Kansas City Southern. On the basis of the divisions prescribed by the Commission in its said order dated December 14, 1925, the total revenue which would have accrued and will accrue to the Brimstone Railroad for the year 1923 on cars interchanged with the Southern Pacific was and is $129,525.50, and the total revenue which [fol. 44] would have accrued and will accrue to the Brimstone Railroad on the cars interchanged with the Kansas City Southern was and is $37,544.00, or a total of $167,069.50. That the total cost of operation of the Brimstone Railroad after making the illegal and unreasonable adjustments made by the Commission's representatives, including interest on investment, as shown by the Commission was, according to the Commission's expert's estimate $177,494.42, leaving a deficit in the Brimstone's operations for the year 1923 below its operating expenses and interest on investment as estimated by the Commission, of $10,424.92.

Complainant further shows that the Commission's expert's adjusted cost of operation, including interest on investment, less accrued depreciation, for the year 1923, was $167,877.07, and the total revenues which the Brimstone would have received and will receive under the Commission's said order will leave a deficit in the operations of the Brimstone, including the amount computed by the Commission as necessary for a fair return of $807.57. Complainant further shows that on the actual reasonable, just and proper operating expenses incurred by the Brimstone in the said year 1923, the above deficit will be greatly increased.

XLI

Complainant further shows that the actual number of cars and tonnage of less than carload freight interchanged by the Brimstone Railroad with its connections during the period from August 1, 1921, to December 31, 1925, inclusive, and the revenue that would have accrued and will [fol. 45] accrue thereon, if the unjust and unreasonable divisions prescribed by the Commission are applied thereto, are, and will be, as follows:

From August 1, 1921, to June 30, 1922:	
Southern Pacific:	
15,703 cars @ $7.22,	$113,808 86
1,817,395 lbs. merchandise, @ 11.5c cwt.	2,089 97
Kansas City Southern:	
2,196 cars @ $8.89	19,522 44
92,628 lbs. merchandise @ 15.5c cwt.	143 57
From July 1, 1922, to December 31, 1925:	
Southern Pacific:	
60,133 cars @ $6.50	390,864 50
5,186,439 lbs. merchandise @ 10.5c cwt.	5,445 76
Kansas City Southern:	
11,486 cars @ $8.00	91,888 00
311,958 lbs. merchandise @ 14c cwt.	436 74
	$624,199 84

XLII

Complainant further shows that if the order of the Commission dated December 14, 1925, is enforced against it, the Brimstone Railroad will be compelled to pay to the Louisiana Western Railroad (Southern Pacific) Company and the Kansas City Southern Railway Company a sum in excess of $400,000.00, which sum would destroy and confiscate complainant's property, and would take its property without due process of law, in violation of the Constitution of the United States.

[fol. 46]

XLIII

Complainant, Brimstone Railroad, shows that the expenses of operating its railroad, including taxes, as set forth in the preceding paragraphs, as shown by its records, books and accounts, were actual, reasonable and necessary expenses, and that its operating expenses in the future cannot be reasonably reduced for handling the same or a greater volume of traffic, and that the divisions of joint rates prescribed by the Commission in its said order dated December 14, 1925, will not afford complainant sufficient revenue, even upon a greater diversion of traffic to the Kansas City Southern than has moved via that connection in the past, to pay its reasonable and just operating expenses, taxes, and a fair return upon its railway property held for and used in the service of transportation as a common carrier.

XLIV

Complainant, Brimstone Railroad, shows that its property is efficiently managed, that it is an originating and delivering line, and that it at all times makes every effort to furnish its transportation service at a minimum cost consistent with efficiency, and alleges that the Commission in its said reports, opinions and orders fails to take these facts into consideration or to give to them any weight whatsoever, as it is required to do by said Section 15, paragraph (6).

XLV

Complainant, Brimstone Railroad, shows that it is entitled to earn from the divisions of joint rates received

[fol. 47] from its connections sufficient revenue to pay its operating expenses, taxes, and a fair return on its railway property held for and used in the service of transportation.

XLVI

The Brimstone Railroad, complainant, will suffer irreparable injury if the said order of the Commission of December 14, 1925, requiring it to adjust divisions of joint rates from and after August 1, 1921, is enforced or complied with, has no recourse at law, and is remediless unless relief is given by this Court by injunction and by other proper orders and decrees against the order and requirements made by the Interstate Commerce Commission heretofore pleaded.

XLVII

Brimstone Railroad, complainant, shows that it is threatened with exorbitant penalties of $5,000.00 per day for each day that it fails to comply with said order of the Commission of December 14, 1925, which penalties the United States will seek to recover through suits filed by the Attorney General of the United States unless temporary restraining orders and injunctions as hereinafter prayed for are granted.

XLVIII

That the complainant, Brimstone Railroad, shows that unless the enforcement of said order of the Commission dated December 14, 1925, is enjoined, the said Louisiana Western Railroad Company, (Southern Pacific), and the said Kansas City Southern Railway Company, will attempt [fol. 48] to enforce the same, and thereby will attempt to reduce the revenue received by the Brimstone Railroad & Canal Company on its interstate freight traffic in connection with the said connecting railroads below the cost of service and a fair return on the value of the property of the Brimstone held for and used in the service of transportation, will thereby take the property of the Brimstone Railroad & Canal Company without due process of law in violation of the Fifth Amendment to the Constitution of the United States, and will cause the said Brimstone Railroad & Canal company irreparable injury.

XLIX

Complainant further shows that the said order dated December 14, 1925, is illegal and void because it fails to determine what would have been reasonable and equitable divisions of the joint through rates received by the several carriers parties thereto. No complaint has been made by any of the connecting lines over which joint through rates in connection with the Brimstone Railroad are applicable, but, on the contrary, the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, which lines connect with the Brimstone and who participate in the joint through rates, together with other connections from and to points on the Brimstone Railroad, and to and from all points in the United States, have concurred in the said divisions as hereinabove set forth, are satisfied with the same, and have presented evidence in the proceeding before the Com-
[fol. 49] mission, upon which the said order was based, as to the reasonableness and justness of the said divisions.

L.

Wherefore, complainant, the Brimstone Railroad & Canal Company, prays that the order of the Interstate Commerce Commission in the proceeding entitled "Divisions Received by the Brimstone Railroad & Canal Company," No. 12,969 on the docket of said Commission, dated August 1, 1921, the order of said Commission in the same proceeding dated April 4, 1922, the order of said Commission in the same proceeding dated March 10, 1924, and the order of said Commission in the same proceeding dated December 14, 1925, in so far as they determine and prescribe divisions of rates to be received by complainant, be annulled, avoided and set aside; that the United States of America, the Interstate Commerce Commission, and any and all persons claiming to act, or acting, under their or its authority, direction or control be forever enjoined and restrained from forcing or attempting in any wise to enforce or put in operation or effect any portion of any or all of said orders in so far as they determine and prescribe divisions to be received by the Brimstone Railroad & Canal Company.

And, complainant further prays in the alternative that the order of the Interstate Commerce Commission in the proceedings entitled "Divisions Received by the Brimstone Railroad & Canal Company," No. 12,969 on the docket of said Commission in the same proceeding dated March [fol. 50] 10, 1924, and the order of said Commission in the same proceeding dated December 14, 1925, in so far as they or either of them determines and prescribes division to be received by the Brimstone Railroad & Canal Company during the period from August 1, 1921, to December 14, 1925, and thereafter, be annulled, avoided and set aside; that the United States of America, the Interstate Commerce Commission, and any and all persons claiming to act, or acting under their or its authority, direction or control be forever enjoined and restrained from enforcing or attempting in any wise to enforce or put in operation or effect any portion of any or all of said orders in so far as they or either of them requires the Brimstone Railroad & Canal Company to adjust the divisions received by it during the period from August 1, 1921, to December 14, 1925.

That the United States of America, and its Attorneys General, special attorneys, and all others acting for or on behalf of the United States, be enjoined from collecting or attempting to in any manner collect any penalties from complainant for its failure to comply with said orders of March 10, 1924, and of December 14, 1925, or any part thereof.

Complainant further prays that the Louisiana Western Railroad Company, (Southern Pacific), and the Kansas City Southern Railway Company, and all of their officers, agents, employees, and all other persons acting or claiming to act under their authority, direction and control, be enjoined and restrained from complying with, [fol. 51] enforcing or attempting to enforce or put in effect any portion of the said orders of the Interstate Commerce Commission dated March 10, 1924, and of December 14, 1925.

And complainant further prays that pending the final hearing hereof, the United States of America, the Interstate Commerce Commission, and all persons claiming to act under their authority, direction and control, be temporarily restrained or enjoined from enforcing or attempt

ing to in any wise enforce or put in effect any portion of the said order of Interstate Commerce Commission of March 10, 1924, and of December 14, 1925.

And complainant further prays that pending final hearing hereof the said Louisiana Western Railroad Company, (Southern Pacific), and the said Kansas City Southern Railway Company, and all of their officers, agents, employees, and all other persons claiming to act under their authority, direction and control, be temporarily restrained or enjoined from enforcing or attempting to in any wise enforce or put in effect any portion of the orders of the Interstate Commerce Commission dated March 10, 1924, and of December 14, 1925.

Complainant further prays for all other and further relief as in equity and good conscience it may be entitled to receive, and may it please this Honorable Court to grant unto complainant a subpœna of the United States of America, issuing out of and under the seal of this Honorable Court directed to the United States of America, to the [fol. 52] Louisiana Western Railroad Company, (Southern Pacific), and to the Kansas City Southern Railway Company, commanding them on a day certain therein to be named to appear before this Honorable Court and then and there to answer, but not under oath, (answer under oath being hereby expressly waived), all and singular the premises; and to stand to, perform and abide by any order, direction or decree as may be made against them in the premises as shall seem meet and agreeable to equity and good conscience.

And this complainant in duty bound will ever pray.

Brimstone Railroad & Canal Company, by James T. Kilbreth, 100 Broadway, N. Y. W. M. Barrow, Baton Rouge, La. Cullen R. Liskow Lake Charles, La. Its Solicitors.

[fols. 53-55] *Duly sworn to by Samuel W. Mafwell. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 56] EXHIBIT "B" TO BILL OF COMPLAINT

5582

INTERSTATE COMMERCE COMMISSION

No. 12969

Divisions Received by BRIMSTONE RAILROAD & CANAL COMPANY

Submitted February 9, 1922. Decided April 4, 1922

1. Brimstone Railroad & Canal Company found to be a common carrier of property subject to the interstate commerce act and may lawfully participate in joint rates with other common carriers or have its charges on interstate shipments absorbed under appropriate tariff provisions.

2. The divisions received by the Brimstone Railroad & Canal Company found to be unjust, unreasonable, inequitable, and to the extent that they exceed the cost of the service and a fair return upon the property of that company held for and used in service of transportation for the public generally, are excessive and, in effect, a rebate to the Union Sulphur Company.

3. The out of line or back haul movement to the track scale should not be included in computing the distance upon which the divisions to be received by the Brimstone Railroad & Canal Company are determined.

4. Respondents required to make a study of the cost of the service performed by the Brimstone Railroad & Canal Company, after which the case will be set for further hearing.

James T. Kilbreth, B. F. Martin and W. M. Barrow for Brimstone Railroad & Canal Company; Denegre, Leovy & Chaffe, F. H. Wood, and J. R. Bell for Southern Pacific Company; Frank H. Moore and George H. Muckley for Kansas City Southern Railway Company; and J. S. Hershey, J. W. Terry, and G. B. Ross for Gulf, Colorado & Santa Fe Railway Company, Atchison, Topeka & Santa

Fe Railway Company, and Panhandle & Santa Fe Railway Company.

W. M. Barrow for Louisiana Public Service Commission.

Wilbur La Roe, Jr., and Clark & La Roe for Texas Gulf Sulphur Company.

Report of the Commission

DANIELS, Commissioner:

This proceeding was instituted upon our own motion to investigate the justness, reasonableness, and equitableness of the divisions of joint rates received by the Brimstone Railroad & Canal Company, hereinafter called the Brimstone. The Kansas City Southern Railway Company and the Southern Pacific Company (Louisiana Western Railroad Company), direct connections of the Brimstone, were made respondents together with the Brimstone.

[fol. 57] In No. 12773, Union Sulphur Co. v. Arkansas & Western Ry. Co., not yet decided, rates on crude sulphur, in carloads, from Sulphur Mine, La., where the Union Sulphur Company, hereinafter called the proprietary company, mines brimstone and sulphur, to all points on the east of the Mississippi River, are attacked as unreasonable, unjustly discriminatory, and unduly preferential of sulphur mines at Gulf Hill and Bryanmound, Tex. The Texas Gulf Sulphur Company, which has a sulphur mine at Gulf, 3.5 miles from Gulf Hill, on the Gulf, Colorado & Santa Fe Railway, intervened in No. 12773 and participated in the instant case. Its interest here is to prevent the proprietary company from obtaining an unlawful advantage through its ownership and control of the Brimstone. The Texas Gulf Sulphur Company receives no allowance for the services it performs for carrying property between its mine and the line of the Gulf, Colorado & Santa Fe. The latter was represented in this proceeding to aid in the development of the facts and because the Sulphur Company may ask an allowance. It urges that the Brimstone is a plant facility of the proprietary company and entitled to no divisions or allowances whatsoever; but that if it is entitled to any division or allowance, the amount should not exceed $4.50 per car, the switching charge or division prescribed by us for over 1 mile to 3 miles in our sixth supplemental order in The Tap Line case, 31 I. C. C., 490.

The Louisiana Public Service Commission, also represented in this proceeding, asks the recognition of the Brimstone as a common carrier which may lawfully participate in joint rates and receive just, reasonable, and equitable divisions thereof.

The Kansas City Southern submits that the divisions of the Brimstone are just and reasonable, both in the light of The Tap Line case, supra, and as compared with divisions received by other short lines in the Southwest.

The Southern Pacific argues that whatever may be the proper return to the Brimstone in the aggregate, the divisions allowed should be uniform and afford equal opportunity between the Kansas City Southern and the Southern Pacific to secure the traffic. Although the distance from the plant of the proprietary company to the interchange tracks of the Southern Pacific is considerably less than to the interchange tracks of the Kansas City Southern, the divisions received by the Brimstone are the same in both instances, having been revised to uniformity by the United States Railroad Administration effective April 1, 1919.

The Brimstone is in southwestern Louisiana, about 12 miles west of Lake Charles, La. Sulphur Mine is 2.5 miles from Sulphur, La., a small station on the Southern Pacific, [fol. 58] about 7.5 miles west of Westlake, La. A map of the Brimstone and its connections is shown in Oil from Texas Ports to Sulphur Mine, 63 I. C. C., 74, at page 78. The Brimstone was incorporated May 27, 1905, under the laws of the State of Louisiana, to conduct a general railroad business and to construct and operate two lines of railroad and a canal, being given certain powers incident thereto. It was authorized to construct a railroad from Brimstone, La., a point in the parish of Calcasieu, on the main line of the Southern Pacific, to Sulphur Mine; another to the Louisiana Texas border; and a canal from Brimstone or Sulphur Mine to the Sabine River or to the Calcasieu River. The line from Brimstone, hereinafter called Brimstone Junction, to Sulphur Mine, thence to Lockport Junction, now called Mossville, La., on the line of the Kansas City Southern, was constructed in the summer of 1905 and operated early the next year. The second line has not been constructed. The canal project was abandoned late in 1906, after more than $100,000 had been expended thereon. Of the 113.33 acres of property acquired by the

Brimstone for a right of way, 38.54 acres were purchased from the proprietary company and 74.79 acres from other owners. The present standard-gauge main line of the Brimstone extends 0.25 mile in a northerly direction from Brimstone Junction, where 0.8 mile of track owned by the Southern Pacific is used jointly by that company and the Brimstone for the interchange of traffic, to a point of connection with tracks of the proprietary company just south of the highway between Vinton and Lake Charles, La., thence easterly to Mossville, where 2.86 miles of track owned and maintained by the Kansas City Southern, are used jointly by the two companies for the movement of sand and shells. There are two divisions of the main line—the Brimstone, 0.75 mile, and the Lockport, 6.64 miles—the dividing line being 0.42 mile northeast of the point of connection between the Brimstone and the tracks of the proprietary company. In addition to the main line, the Brimstone owns 1.68 miles of spurs or sidings. The principal spurs are on the Lockport division, and are called Portletown pipe spur, De Quincy Road spur, and K. & M. Warehouse spur, the latter being used by the Krause & Managan Lumber Company and other shippers. The main tracks of the Brimstone have 90-pound rails, while some of the spurs or sidings have only 60-pound rails.

The Portletown pipe spur was used for the unloading of pipe during the war and is now used to serve the public in its vicinity. These and other spurs are available for use by the general public and have been used principally by the parish of Calcasieu in unloading road-building materials, aggregating 2,880 carloads since 1912. The unloading on the Brimstone of materials for public roads saved wagon hauls from Sulphur of from 0.5 to 0.75 mile. It is estimated that in the near future at least 1,000 carloads [fol. 50] of sand, gravel, and cement will be needed for the construction and maintenance of roads near the Brimstone. The Brimstone also serves the Houston River Canal Company, which has a warehouse at the point of connection between the Brimstone and the tracks of the proprietary company, near which a team track is situated; farmers located along its Lockport division; consignees of carload freight on the interchange tracks at Mossville; an employees' general merchandise cooperative store not avail-

able to the public; employees of the proprietary company and of the Brimstone occupying about 100 houses at or near Sulphur Mine; and about 3,000 other persons residing along its line. A portion of the line of the Brimtsone parallels the line of the Southern Pacific, but the nearest stations of the latter company having warehouse facilities are at Sulphur and Westlake.

The efficiency of the service rendered by the Brimstone is commended by the Krause & Managan Lumber Company, the Houston River Canal Company, and the engineer engaged in road building in the vicinity of Brimstone.

The Brimstone operates without charge over 6.9 miles of the proprietary company's tracks. The tracks of the proprietary company, 9.61 miles, lying immediately north of the Vinton Lake Charles highway, are laid to the sulphur storage bins, the track scales, warehouses, train shed, car-repair shop, forge shop, machine shop, water spout, locomotive fuel station, and various other points near the mines of the proprietary company, as well as to another connection with the Lockport division of the Brimstone. The track scales of the proprietary company are not under the supervision of the Western Weighing and Inspection Bureau.

The Brimstone has no repair shop, roundhouse, water wells, water tanks, pumps, or water-service equipment. Repairs to equipment, which involved an expenditure of nearly $73,000 in 1920, were and are made by the proprietary company at cost plus 30 per cent, and one of the track crews of the proprietary company maintains the roadway and track at actual cost to the Brimstone. These latter expenses amounted to about $29,000 in 1920. Water is obtained from the proprietary company without charge. The train shed of the proprietary company is used as the roundhouse of the Brimstone. A portion of one of the warehouses of the proprietary company is used, without charge, as the freight station of the Brimstone for the receipt and delivery of less than carload freight for the public; the tracks of the proprietary company adjacent thereto are used as public team tracks of the Brimstone, and an employee of the proprietary company acts as the agent of the Brimstone. The Brimstone uses a portion of the office of the proprietary company at a rental of $5 per month, including light, heat,

[fol. 60] and janitor service, the stenographic and clerical assistants employed there and paid by the proprietary company being used by the Brimstone. The yardmaster at Sulphur Mine acts in that capacity for both companies, but is paid by the proprietary company. Other than the secretary, officials of the Brimstone are officials of the proprietary company, and the former company pays certain proportions of their salaries. The Brimstone purchases its fuel oil from the proprietary company. Supplies, other than steel rails, crossties, and materials used in extension work, are obtained from the proprietary company at cost, as the latter can purchase many of them in large quantities cheaper than the Brimstone could purchase the smaller quantities used by it.

The Brimstone has a track scale located on its Brimstone division about 300 feet from its connection with the tracks of the proprietary company, where the weighing for the purpose of assessing freight charges is done by an authorized weighmaster of the Western Weighing and Inspection Bureau, and his compensation is paid by the Brimstone. All other employees, such as engine crews, are separate employees of the Brimstone. The Brimstone estimates that in order to provide itself with the proper facilities to serve the public without using the terminal facilities of the proprietary company now used without compensation, it would be compelled to make a capital expenditure of $182,500 for about 7 miles of track at $15,000 per mile; a shop, $50,000; roundhouse, $10,000; water wells, $2,500; water tanks, pumps, and water-service equipment, $2,500; fuel tanks, pumps, and equipment, $2,500; and an additional switch engine, $10,000. It also estimates that its operating expenses for the maintenance of these facilities would be $22,324 per year. The free use of the facilities of the proprietary company is a long-standing practice.

The Brimstone owns 3 standard locomotives and 156 gondola coal cars of 100,000 pound capacity. The coal cars are especially adapted for and exclusively used in the carriage of sulphur to Sabine, Tex. The proprietary company owns 7 standard-gauge locomotives, 15 flat cars, 10 box cars, and 75 dump cars.

Sulphur moves in trainloads from Sulphur Mine to Sabine, 78.7 miles, at the rate of about 25 cars per day.

The sidetracks and locomotive equipment there are provided by the Southern Pacific (Texas & New Orleans Railroad), which performs the switching. The proprietary company owns a terminal at Sabine for the handling of sulphur for transshipment.

Empty cars for sulphur loading are moved by the Brimstone from the junctions to the sulphur storage bins about a half mile from the point of connection, whence they are moved by the power of the proprietary company to the [fol. 61] sulphur vats for loading, after being weighed light on the proprietary company's scales near the box-car loading plant. After the cars are loaded they are again weighed by the proprietary company for the purpose of avoiding complaint of over or under weight. The cars are then moved by the Brimstone about 0.5 mile over the line of the proprietary company to the point of connection with the Brimstone, thence to the track scales of the Brimstone about 0.5 mile for weighing, then back 0.75 mile over the line of the Brimstone to the junction, and 0.5 mile over the interchange track of the Southern Pacific at Brimstone Junction. The movement in the reverse direction is the same. The initial movement to Mossville is the same to the scales, except that the cars, after being weighed by the Brimstone continue in the same direction en route to Mossville, a total distance for the round trip of the loaded and empty car of 15.28 miles. Divisions are always made for the loaded movement only. Fuel oil is moved to a point about 0.5 mile directly north of the point of connection of the Brimstone and the tracks of the proprietary company, and is placed opposite the oil pumping station. The average haul to both junction points, loaded and empty, is stated to be 9.39 miles. The average haul of revenue freight over the Brimstone in 1920 was 0.94 mile, which does not include movements over the tracks of the proprietary company, nor the movements on the interchange tracks at the junction points. Rice originating on the Lockport division at the warehouse of the Krause & Managan Lumber Company is hauled southwest toward Brimstone Junction 4.8 miles and, after being weighed, is hauled back southeast 6.64 miles to Mossville. General merchandise for the proprietary company and for the public is delivered to the warehouse used as its freight station by the Brimstone. The average haul

between independent industries, team tracks, the freight station, and the junctions with the trunk line carriers, is 6 miles.

In Louisiana & Pine Bluff Divisions, 40 I. C. C., 470, we held that an out of line or diverted movement to a track scale should not, under the second supplemental report in The Tap Line case, be included in computing the distance upon which the division that a tap line may receive is to be determined; that decision was adhered to on reargument, 53 I. C. C., 475, and sustained as not unreasonable or arbitrary in Louisiana & P. B. Ry. Co. v. United States, 274 Fed., 372, and by the Supreme Court on November 7, 1921. The latter decision is not yet reported. The Brimstone contends that the track scales are located as near Brimstone Junction as physical conditions will permit and that greater efficiency is obtained by their being located there than if they were located nearer to Mossville. The weight obtained by the originating carrier ordinarily is accepted as the basis of settlement between the consignor and consignee and for [fol. 62] the freight charges. No charge is made for the service of weighing.

The proprietary company performs its intraplant switching and, sometimes, when convenient, the power of the proprietary company is used to move traffic between the plant and the interchange tracks of connecting carriers. The handling of the traffic of the proprietary company by the Brimstone is not incident to any manufacturing process, and the movements to the junction points are made to accommodate the schedules of the trunk line connections.

The outbound tonnage for the year ended December 31, 1920, consisted of 17,314 cars of sulphur, of which 4,045 cars moved all rail; 21 cars of forest products; 14 cars of rice; 2 cars of crude petroleum; 25 cars of iron and steel articles; 4 cars of household goods; and 2 cars of miscellaneous commodities. The inbound tonnage for that year consisted of 1,065 cars of crude petroleum and 131 carloads of grain, hay, coal, forest products, iron and steel articles, household goods, and other commodities. The crude petroleum is used by the proprietary company. The Brimstone originated 36 tons and received 323 tons of less than carload freight during that year. Slightly over 98 per cent of the carload tonnage outbound and inbound, and 73 per cent of

the less than carload tonnage, was for the proprietary company.

For the first six months of 1921, the Brimstone forwarded via the Southern Pacific 419 cars of sulphur which moved all rail; 2,621 cars which moved to Sabine thence by water; and received, during that period, 3,352 cars of fuel oil via that line. No fuel oil was received during that period via the Kansas City Southern, but 358 cars of sulphur were forwarded over its line. During the same period 7,408,767 pounds of various commodities were moved by the Brimstone for shippers other than the proprietary company. For the carriage of 958,478.74 tons, or 18,436 cars, of all commodities, all but 6,695 tons of which, or 186 cars, was interstate, between the plants of the proprietary company and the junctions with the trunk line carriers, the Brimstone received $243,163.63, or an average of $13.19 per car. For the calendar year 1920 the average revenue per ton of freight amounted to 0.25827 cent; the operating revenues 96.08 cents per train-mile; operating expenses, 75.55 cents per train-mile; and the operating ratio 78.63. The average operating expenses and taxes alone were, on all freight, $11.57 per car. The average earnings on sulphur, based on the average on all freight, were about $13.72 per car. The average earnings per car on crude oil during that year were $8.39. The operating expenses per mile of road of the Brimstone for the calendar year 1920 were $26,425; for the United States for the 10 months ended October, 1920, for 200 Class I roads, $20,550.

The Brimstone is taxed by the tax commission of the State of Louisiana upon a higher rate than if it were a plant [fol. 63] facility, and in some instances at a higher rate than are common carriers in Louisiana. It complies with Federal and State laws and files annual reports and tariffs. It abides by some of the rules of the American Railway Association, especially in the settlement of freight claims, but is not a member of that association. It assesses demurrage for its own account, having an average agreement with the proprietary company. It pays and receives per diem on foreign line equipment, having had a credit balance of nearly $5,000 for hire of freight cars in 1920. It receives mileage of 1.5 cents per mile on its own freight cars when on foreign lines. It does not engage in the carriage of pas-

sengers, mail, or express. Bills of lading are issued by it, the traffic being handled under through-waybill arrangements, and the freight charges are settled monthly with the trunk-line connections in accordance with accounting rules.

The capital stock authorized by the charter of the Brimstone was $100,000, of which $31,000 was issued for cash at par. On January 22, 1914, the stockholders authorized an increase of the capital stock to $200,000, 2,000 shares, par value $100 each, 1,995 of which are owned by the proprietary company, the remainder by directors, three of whom are officials of both the Brimstone and the proprietary company. The Brimstone has no funded debt. Its demand notes, used in financing the construction of the railroad and of the canal, have been liquidated, and a 100 per cent dividend was declared in 1914 immediately upon the issuance of the remainder of the capital stock, $84,500. Dividends of 60 per cent in 1917 and 40 per cent in1918 have been declared, and a credit balance in profit and loss of $165,378.82 was shown in the Brimstone's annual report as of December 31, 1920.

The book value of the various classes of property of the Brimstone as of December 31, 1920, which is original cost plus subsequent additions and betterments, follows: Road, $126,490.26; equipment, $370,155.60; canal right of way, $13,239.14; general expenditures, $85.50; materials and supplies, $10,076.96; total property investment, $520,047.46. As of August 31, 1921, the total assets are shown as $641,569.69. The Louisiana Tax Commission placed the valuation of the Brimstone for assessment purposes as $425,323; main line, $20,000 per mile; sidetrack, $4,000 per mile; equipment, $261,000. The Brimstone had an engineer value the property as of December 31, 1920, using the inventory notes of our bureau of valuation, showing quantities as of June 30, 1918, to which were applied price levels of 1914, the year adopted by the bureau of valuation in the valuation of all carrier property. This engineer's estimate of the cost of reproduction new as of June 30, 1918, based on the 1914 price level, for road, equipment, and general expenditures, not including working capital, materials and supplies, cost [fol. 64] of 16 miles of canal right of way, or anything for

appreciation or for the Brimstone as a going concern, is $266,852. This figure is increased by adding the working capital, materials and supplies, and the cost of the canal right of way, to $316,297; and by additions and betterments since June 30, 1918, to December 31, 1920, to $525,772. Based on his study of the increase, 1920 over 1914, of materials and supplies and of labor, the cost as of June 30, 1918, has been increased 110 per cent, except for land for transportation purposes, thus making the cost of reproduction new of the Brimstone as of December 31, 1920, $811,585. To what extent this amount should be decreased to allow for depreciation can not be stated at this time, although the amount of reserve for accrued depreciation on December 31, 1920, was nearly $80,000.

The railway operating revenues of the Brimstone for 1920 were $248,363; operating expenses, $195,287.20; taxes, $19,291.64; leaving a railway operating income of $33,384.14, which, with the additions of income from hire of equipment, income from unfunded securities and accounts, and miscellaneous income, total $6,204.01, gave a net income of $39,588.17. The operating revenues of the Brimstone for the six months' period ended June 30, 1921, were from freight service, $96,091.60; demurrage, $241; total $96,332.60. Operating expenses were $73,592.95, leaving a net revenue from railway operations of $22,739.65, which, less tax accruals of $3,810.48, and plus nonoperating income of $3,977.04, afforded a net income, to be transferred to profit and loss, of $22,906.21.

The Brimstone has been a participant in joint rates for a number of years; it concurs in and is a party to various tariffs of the Kansas City Southern Pacific and to various agency tariffs. As part of the general revision during the period of Federal control by a committee of traffic officers of the United States Railroad Administration of the divisions of trunk lines and short lines, no member of the committee having been an official of either the Kansas City Southern or of the Southern Pacific, the divisions of the Brimstone, with those carriers and their connections, were revised. The present divisions are:

Sulphur, when destined Port Arthur, Sabine, or Galveston, Tex., New Orleans, Gretna, or Algiers, La. for coastwise movement or for export 27 cents per gross ton, equivalent to 1.2 cents per 100 pounds;
Sulphur, when destined points other than those shown above, 3 cents per 100 pounds;
Fuel oil, 1.4 cents per 100 pounds;
Brick, coal, lumber, and stone, 2.7 cents per 100 pounds;
Cement, 3.4 cents per 100 pounds;
Logs, destined Westlake, La., $5 per car;
All other carload traffic, 4 cents per 100 pounds.
Merchandise, less than carloads, 13.5 cents per 100 pounds.

[fol. 65] The divisions include the increases of 35 per cent under the general increases of 1920. The divisions, thus increased, are those established by the United States Railroad Administration, except that on fuel oil from Shreveport, La., to Sulphur Mine, the Brimstone is allowed 2 cents per 100 pounds; on fuel wood in carloads from Toomey, La., to Sulphur Mine, it is allowed 1.5 cents per 100 pounds; and on shipments of crude and fuel oil originating at Rodessa, La., and South Mansfield, La., it is allowed 2 cents per 100 pounds.

These divisions are contrasted by the respondents with those revised by the United States Railroad Administration for various tap lines operating in southwestern territory, which do not originate sulphur, 98 per cent of which is mined at Sulphur Mine, Gulf Hill, and Bryanmound. Although the operating conditions on these roads are not clearly shown of record, the physical conditions on the majority of them were described in The Tap Line case, 23 I. C. C., 277 and 549. The railroad administration revised the divisions of each road according to the facts in each case. It will suffice to say that the divisions exhibited of these roads in some instances are higher and in other instances are lower than those of the Brimstone. The sixth supplemental order in The Tap Line case, issued September 20, 1920, authorized switching charges of $4.50 per car for over 1 mile to 3 miles and 3 cents per 100 pounds for over 3 miles to 10 miles on interstate shipments of lumber and forest products. While the principles announced in The Tap Line cases, 234 U. S., 1, have been

given effect in determining the common-carrier status of industrial railways, in determining the divisions of industrial railways, each case is decided upon the facts, circumstances, and conditions appearing in connection therewith. The Southern Pacific states that if the Brimstone should receive $4.50 for the service it performs in hauling an 80,000-pound car of sulphur to the interchange tracks of the Southern Pacific and 3 cents per 100 pounds for hauling a similar car to the interchange tracks with the Kansas City Southern, the elimination of the Southern Pacific from further participation in competitive traffic would follow as a matter of course, because short lines invariably interchange traffic by way of the junction through which they receive the highest divisions. Where hauls differ by not more than five miles or thereabouts, each requiring two terminal services, we are not disposed to insist on a very material difference in divisions, especially where such a difference would induce an uneconomical handling of traffic via the more distant junction point.

Although the divisions are stated in uniform amounts, the fact that the coastwise and export shipments of sulphur move via the Southern Pacific and, generally, the fuel oil moves via the line of that carrier, makes the uniformity [fol. 66] one more apparent than real. But on all-rail shipments, moving via the line of either connecting carrier, slightly different service for equal divisions is actual and not one which exists on paper merely.

The difference in the divisions of the Brimstone on sulphur for coastwise movement and for export, on the one hand, and those on all other sulphur, on the other, about 1.8 cents per 100 pounds more on the latter than on the former shipments, is explained by the differences in the rates which are divided. For example, the domestic rate on sulphur from Sulphur Mine to Sabine is 11.5 cents per 100 pounds; the export rate $1.08 per gross ton, equivalent to 4.8 cents per 100 pounds, of which the Brimstone receives 1.2 cents, whereas the rates for all-rail shipments from Sulphur Mine range from 19 cents per 100 pounds to New Orleans to 82 cents per 100 pounds to Boston, Mass. The car earnings to New Orleans are $152; to Boston, $656. The coastwise and export shipments move in gondola cars in trainloads, the loaded cars only being weighed. The

comparatively lesser number of rail shipments move in box cars, singly or in numbers not to exceed about five per day. The cars are weighed light and loaded.

The instant case is not one in which either of the participating carriers is dissatisfied with its divisions; none is asking that they be changed; in fact, all the respondents urge that the divisions be maintained. Primarily the focus of attention is directed to whether the divisions are so large that the proprietary company is given an undue preference in transportation rates over its competitors.

The Industrial Railway cases, 29 I. C. C., 212, 34 I. C. C., 596, rest largely upon the principle of placing the cost of service where it properly belongs. No cost study was submitted in this proceeding. The witness for the Southern Pacific testified it would be extremely difficult to determine precisely the difference in the cost to the two junctions, as the terminal costs are the same in either case and so many of the expenses are constant, continuous, and apply alike to all traffic. The witness for the Kansas City Southern was of the opinion that there is no doubt but that it costs the Brimstone more to perform the service on traffic interchanged with the Kansas City Southern than on traffic interchanged with the Southern Pacific. The Brimstone connected with the Southern Pacific before connection was made with the Kansas City Southern. No divisions were made by the Southern Pacific until they were made by the Kansas City Southern and then only on that account. If the divisions which were in effect at that time on the Kansas City Southern and which were not by the Southern Pacific had been subjected to the increases authorized under General Order No. 28, and the general increases of 1920, they would have been somewhat higher than the present [fol. 67] divisions which were revised by the railroad administration and have since been increased to reflect the general increases of 1920.

Our order instituting this proceeding did not specifically raise the issue of the common carrier status of the Brimstone. But as a prerequisite to receiving divisions it must be a common carrier. As observed, the Brimstone and the proprietary company represent a single investment, and whether the Brimstone has only a technical status as a common carrier invites careful scrutiny. The record dis-

closes that the locomotives of the proprietary company in many instances perform the switching service for the Brimstone; that the facilities of the proprietary company, valued at approximately $260,000, are used by the Brimstone without charge; and it is averred that the maintenance alone of such facilities would cost the Brimstone about $22,324 annually. These facts and many others tend strongly to support the belief that the Brimstone and the proprietary company represent one enterprise and that the separate incorporation of the Brimstone affords merely an expeditious means of conducting a commercial enterprise to encroach upon the revenues of the trunk lines. But the facts also clearly show that the public has a right to use the facilities of the Brimstone and may demand its service. Comparison of the traffic of independent shippers using the Brimstone with that of the proprietary company shows the percentage of the former to be small. It is the right of the public to demand and use the Brimstone, rather than the extent of the tonnage it carries, that is the real criterion of whether it is a common carrier. The Tap Line cases, 234 U. S., 1.

We find that the Brimstone Railroad & Canal Company is a common carrier of property subject to the interstate commerce act, and that it may lawfully receive divisions of rates jointly established by it and its trunk line connections under appropriate tariff provisions, such divisions to be just, reasonable, and equitable, and not so disproportionate as to amount to rebates or discriminations in favor of the proprietary company in view of the service rendered.

Since the Brimstone is so closely allied to the proprietary company, the extent to which it receives divisions from the trunk lines merits careful consideration. As the Supreme Court has observed in the Tap Line cases, supra:

> If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

One purpose of the act is to prevent rebates effected by means of exorbitant divisions which find their way to pro-

[fol. 68] prietary companies through common carriers like the Brimstone. We cannot overlook the fact that high dividends have been declared in the past or that the accumulated surplus is now sufficient to declare a dividend of almost 100 per cent on the capital stock.

On all-rail movements of sulphur the Brimstone is shown to receive 3 cents per 100 pounds or about $24 per car for the transportation to the interchanges with the Kansas City Southern and Southern Pacific. The haul to the Kansas City Southern is about 7.5 miles and to the Southern Pacific about 1.5 miles, exclusive of the haul to and from the scales. On behalf of the Brimstone it was testified that it receives 1.2 cents per 100 pounds or about $10 per car as a division on sulphur to Gulf ports for coastwise or export movement. The average division on traffic other than sulphur for coastwise and export movement is said to be less than $24 per car. It is observed that the capacity of the cars of the Brimstone is 100,000 pounds and that it is necessary to weight the sulphur to avoid overloading the cars. The divisions on 100,000 pounds of sulphur would be $30 at the 3 cent division and $12 at the 1.2 cent division.

For the service performed by the Brimstone on carload traffic interchanged with the Southern Pacific for what is in some respects similar to a switching service a division of from $10 to $24 per car seems excessive. The operating cost of that service on the Brimstone to and from the Southern Pacific junction must be practically the same, regardless of the contents of the car, its origin, or destination. As was stated in Class Rates from Chestnut Ridge Railway Stations, 50 I. C. C., 152, it is impracticable and of doubtful accuracy to attempt any refinement of the cost beyond the carload unit in connection with a switching service. In that case we had before us evidence showing the average operating expense of all interchange carload traffic, including per diem on all traffic, and held that the carload should be the unit, and no different charge should be made on different kinds of traffic for a switching service. The divisions to the Brimstone should produce no more than an amount sufficient to cover the cost of its service and a fair return upon the property held for and used in the service of transportation. We conclude that the facts of

record, including the dividends paid by the Brimstone in past years and the accumulated credit balance to profit and loss, indicate divisions to the Brimstone which are disproportionate in view of the service rendered, and are tantamount to a rebate to the proprietary company.

We find that the divisions of joint rates now received by the Brimstone from the two other respondents on interstate traffic are and for the future will be unjust, unreasonable [fol. 69] able, inequitable, and to the extent that they exceed or may exceed the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, are excessive, and, in effect, amount to a rebate to the proprietary company. It does not necessarily follow that reasonable and equitable divisions to the Brimstone should be on the maximum basis.

The record will be held open for a period of 90 days from the date of service of this report, during which respondents will be expected to make the necessary cost studies for the purpose of arriving at reasonable divisions to the Brimstone. In compiling the necessary cost figures the factors outlined by us in Chicago, West Pullman & Southern R. R. Co. case, 37 I. C. C., 408, should be taken into consideration so far as applicable. The out of line movement to the track scale on traffic interchanged with the Southern Pacific should not be included in computing the cost of the service. After the cost studies have been prepared they should, within 60 days from the service hereof, be submitted to us with copies thereof to the parties to this proceeding. The case will then be set for further hearing in order to fix just, reasonable, and equitable divisions of joint rates on interstate and foreign commerce to be received by the Brimstone.

By the commission.

George B. McGinty, Secretary. (Seal.)

A true copy. George B. McGinty, Secretary. (Seal of Interstate Commerce Commission.)

[fol. 70] EXHIBIT "C" TO BILL OF COMPLAINT

[fol. 71] No. 12969

Division Received by BRIMSTONE RAILROAD & CANAL COMPANY

Submitted July 11, 1923. Decided March 10, 1924

Following original report in this case, 68 I. C. C., 375, just, reasonable, and equitable divisions to the Brimstone Railroad & Canal Company prescribed on traffic to and from its connections.

W. M. Barrow, Arthur Fallon, James T. Kilbreth, and C. R. Liskow for Brimstone Railroad & Canal Company.

F. H. Wood, J. R. Bell, Denegre, Leovy & Chaffe, and Harry McCall for Southern Pacific Company; Frank H. Moore, Geo. H. Muckley, and Clarence R. Hall for Kansas City Southern Railway Company; G. B. Ross and J. J. Morrisey for Gulf, Colorado & Santa Fe Railway Company, Atchison, Topeka & Santa Fe Railway Company, and Panhandle & Santa Fe Railway Company.

Frederick E. Brown and Fred Juenger for Texas Gulf Sulphur Company.

Report of the Commission on Further Hearing

MCMANAMY, Commissioner:

Exceptions were filed by the parties to the report proposed by the examiner, and the case was orally argued. We have reached conclusions differing in part from those proposed by the examiner.

In the original report, 68 I. C. C., 375, we found that the Brimstone Railroad & Canal Company, hereinafter called the Brimstone, was a common carrier of property subject to the interstate commerce act, entitled lawfully to receive just and reasonable divisions of rates jointly established by it and its trunk line connections under appropriate tariff provisions; and that——

the divisions of joint rates now received by the Brimstone from the two other respondents on interstate traffic are

and for the future will be unjust, unreasonable, inequitable, and to the extent that they exceed or may exceed the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, are excessive, and, in effect, amount to a rebate to the proprietary company.

The record was held open for a period of 90 days to permit respondents to make necessary cost studies for the purpose of arriving at reasonable divisions to the Brimstone. Cost studies have been filed with us and further hearing and oral arguments have been had.

88 I. C. C.

[fol. 72] Method Used in the Cost Study

Respondents are the Brimstone, the Kansas City Southern, and the Louisiana Western, hereinafter referred to as the Southern Pacific. The cost study of respondents is intended to develop the average cost, including return on investment, of moving loaded cars to and from the Southern Pacific and Kansas City Southern. For the purpose of segregating costs and fair return as between Southern Pacific and Kansas City Southern movements, the facilities of the Brimstone and such facilities of the Union Sulphur Company, hereinafter referred to as the proprietary company, as respondents consider essential to the common carrier service of the Brimstone were divided into the following zones: (1) Southern Pacific zone, comprising facilities used exclusively in the movement of cars to and from the Southern Pacific, (2) Kansas City Southern zone, comprising facilities used exclusively in the movement of cars to and from the Kansas City Southern, and (3) common zone, comprising facilities used in the movement of cars to and from both the Southern Pacific and the Kansas City Southern. The operating expenses and taxes of the Brimstone for 1921, augmented by certain amounts to cover items which it is claimed were not included in its accounts for that year, such expenses and taxes of the proprietary company for 1921 as were considered essential to the common carrier service of the Brimstone, and the annual return claimed, were equated to a seven-day period, May 26 to June 1, 1922, selected for the purpose of the study, which

is referred to hereinafter as the test period. The amounts produced by these equations were divided as between the three designated zones. The amounts assigned to zones were then reduced to costs per engine hour upon the basis of the actual time during the test period that engines of the Brimstone were engaged in each zone. The average time consumed in handling cars was determined for each zone by dividing the total engine time consumed in that zone by the number of loaded cars handled therein. The average cost per car for each zone was obtained by applying the average number of minutes of engine time per car in each zone against the average cost per engine minute for that zone. The total average costs per loaded car where reached in case of the Southern Pacific, by adding the average costs per car for cars handled in the Southern Pacific and common zones, and in case of the Kansas City Southern, by adding the average costs per car for cars handled in the Kansas City Southern and common zones.

Details of the Cost Study

The operating expenses and taxes of the Brimstone for 1921, aggregating $153,599.03, constituted the basis of respondents' cost study. To this amount there was added [fol. 73] the sum of $25,972.69, not included in the audited accounts of the Brimstone for 1921, but which respondents contend covers items essential to its common-carrier operations during that year. Of this amount, $5,561.28 represents proportions of salaries and expenses of officials, clerks, and others paid by the proprietary company; $2,197.10 covers the value of water and fuel oil and the cost of drying sand provided by the proprietary company for the use of the Brimstone, for which no actual charge was made; and $1,440 represents estimated rentals for use of engine house, warehouse, and office space owned by the proprietary company but used by the Brimstone. The remaining items, which will be explained in detail, comprise $3,675.55 for the use of the proprietary company's motive power and $13,098.76 for maintenance, taxes, and rental of certain tracks of that company.

Respondents estimated the rental value of a locomotive of the type owned by the proprietary company, including wages of crew, fuel, water, and supplies, at $34.32 per

day of eight hours in 1922. Upon this basis the value of the service performed during the test period by the locomotive of the proprietary company, which respondents consider was essential to the common carrier operations of the Brimstone, averaged $10.07 per day, or at the rate of $3,675.55 per annum.

The proprietary company owns 8.01 miles of track, of which respondents consider the Brimstone should bear a portion of the maintenance, rental, and taxes on 3.88 miles, which is used jointly by the two companies. Due to alleged greater use of 2.76 miles of the 3.88 miles of track, respondents allocated maintenance to it in the ratio of 1.5 to 1 per mile, the balance of maintenance expenses being apportioned over the remaining 5.25 miles uniformly on a mileage basis. These processes produced, in the case of the 2.76 miles, an average cost per mile of $2,967 as compared with $1,978 per mile for the remainder of the track. Ninety per cent of the maintenance allocated to the 2.76 miles of track and 35 per cent of that allocated to 1.12 miles of track, in amount $8,146.86, was included as part of the operating costs of the Brimstone. Respondents estimated the 1921 taxes paid on the 2.76 miles of track at $67.06 and on the 1.12 miles of track at $10.95. Ninety per cent of $67.06 and 35 per cent of $10.95, in the aggregate $64.17, was included in the operating costs of the Brimstone. The amount of interest rental chargeable to the Brimstone was determined by respondents on the basis of valuations placed on the tracks as of December 31, 1921. They estimated the cost of reproduction new on that date at $76,811 for the 2.76 miles of track, and $35,235 for the 1.12 miles. As these figures were computed in the same manner as those for the cost of reproduction new of the Brimstone property, they [fol. 74] will be reserved for discussion under the subject of valuation. Respondents added to the operating costs of the Brimstone $4,887.73 for interest rental, which comprises 90 per cent of the amount representing 6 per cent on $76,811 and 35 per cent of the amount representing 6 per cent on $35,235.

The operating costs of the Brimstone, as adjusted by respondents, aggregated $179,481.72, which, equated to the test period, produced $3,442.46. The items constituting this sum were apportioned to the three designated zones on dif-

ferent bases. The sum of $328.14 representing expenses for maintenance of way and structures of Brimstone facilities was divided on a track-mileage basis. A total of $2,577.79, representing maintenance of equipment, traffic expenses, transportation expenses, and general expenses of the Brimstone was apportioned on the basis of the actual number of hours which locomotives of the Brimstone worked in the three zones during the test period. An amount of $214.80 covering taxes, was first divided between the proportions applicable to main line, sidetracks, and equipment. The portion covering main line and sidetracks was segregated as between zones on a track mileage basis. The portion covering equipment was assigned to the common zone. The remainder, $321.73, representing expense of the proprietary company's locomotive and maintenance, taxes, and interest rental on tracks of the proprietary company, was assigned to the common zone, because the locomotive was employed in that zone, and the tracks in question are located there. These processes of allocation and apportionment produced the following amounts for each zone: Southern Pacific $362.59; Kansas City Southern $571.13; common $2,508.74.

In order to determine a fair return for the Brimstone, respondents valued the property of that company on a cost of reproduction new basis. The application of unit prices of 1914 to the quantities of June 30, 1918, said to have been taken from notes of the Bureau of Valuation, produced $266,752. This sum with the exception of $6,922, covering land for transportation purposes, was increased by 110 per cent, or, including land for transportation purposes, to $552,565, to bring the unit prices up to the level prevailing on December 31, 1920. To this sum the following amounts were added: For working capital, $31,639, being the amount of cash on hand as of June 30, 1918; for material and supplies, $4,667, being the amount in stock on June 30, 1918; cost of right of way for 16 miles of canal, $13,239; for additions and betterments, July 1, 1918, to December 31, 1921, $231,936; a total for cost of reproduction new as of December 31, 1921, of $834,046, which, with certain exceptions to be mentioned later, was divided between zones on the basis of property locations, as follows: Southern [fol. 74a] Pacific $13,596.04, Kansas City Southern $135,

230.86, common $685,219.10. The exceptions were in case of equipment, consisting of steam locomotives and freight train cars, working capital, material and supplies, and canal right of way, which were assigned to the common zone. Respondents computed the fair annual return at 6 per cent of the sums allocated to the respective zones. These amounts, as equated to the test period by zones, are: Southern Pacific $15.65, Kansas City Southern $155.62, common $788.55. The addition of these amounts to the equated operating costs produced the following aggregate amounts of estimated cost and fair return for each zone during the test period: Southern Pacific $378.24, Kansas City Southern $726.75, common $3,297.29. The average cost per engine hour, including return for each zone determined by dividing these amounts by the total number of engine-hours worked by locomotives of the Brimstone and the proprietary company during the test period in the respective zones, was as follows: Southern Pacific $60.1973, Kansas City Southern $149.3322, common $61.8822.

During the test period 487 loaded cars were received and delivered by the Brimstone, 447 being handled in connection with the Southern Pacific, and 40 in connection with the Kansas City Southern. Respondents' study of operations disclosed that the average length of time per car consumed by engines in the respective zones, was as follows: Southern Pacific 0.8434 minute, Kansas City Southern 7.3 minutes, common 6.5647 minutes. The figure for the common zone includes service performed by the locomotive of the proprietary company. The application of the average number of minutes per car consumed in each zone against the average cost per engine minute in each of the respective zones, produced the following average costs per car, including return on the value of property held for and used in public service: Southern Pacific $0.8462, Kansas City Southern $18.1688, common $6.7706. One reason for the much higher cost in the Kansas City Southern zone is the high cost per engine hour in that zone. All loaded cars moving to or from either the Southern Pacific or Kansas City Southern must pass through the common zone. Hence the average cost per car on traffic to and from either of these carriers was obtained by adding the common zone cost to the zone cost of the carrier in question.

Respondents' figures resulted in showing costs per car during the test period, including return, of $7.6168 in case of the Southern Pacific, and $24.9394 in case of the Kansas City Southern, or an average cost of $9.0396 per car.

After the hearing, respondents submitted the results of additional cost studies, similar in all respects to that de- [fol. 75] tailed above, except that the fair return was computed on values based in part upon 1922 prices, and an amount of $13,239, representing the cost of right of way for a canal, included in the original valuation, was omitted. These valuations reflect estimates for cost of reproduction new and cost of reproduction less depreciation as follows: Cost of reproduction new, Brimstone, $677,900.50, proprietary company, $84,503; cost of reproduction less depreciation, Brimstone, $538,616.61, proprietary company, $57,913. The amounts representing cost of reproduction new were determined by increasing all items of the cost of reproduction new as of June 30, 1918, based on 1914 unit prices, except that representing land for transportation purposes, by 55 per cent to bring the prices up to the level prevailing in 1922. This computation, with the addition of the amount representing land for transportation purposes, produced $409,658.50 in case of the Brimstone and $78,206 in case of the proprietary company. To them were added the same amounts for additions and betterments, July 1, 1918, to December 31, 1921, working capital, and material and supplies, as were included in the original valuations. The amounts representing cost of reproduction less depreciation were determined in the same manner except that the amounts of $409,658.50 in case of the Brimstone and $78,206 in case of the proprietary company, were depreciated by 34 per cent. Upon the basis of these revised valuations respondents' figures show the costs per car during the test period, including return, were as follows: Based on reproduction new, Southern Pacific, $7.2755, Kansas City Southern, $23.6853, average $8.6232; based on reproduction less depreciation, Southern Pacific, $6.9778, Kansas City Southern, $22.4485, average $8.2484.

Discussion of Cost Study

In the original report in this case we instructed respondents not to include "the out of line movement to the track

scale on traffic interchanged with the Southern Pacific," in computing the cost of the service. Nevertheless the costs incident to this back haul have been included in the cost figures, on the theory that the operation of the track scales in their present location is practical and economical. The additional cost of the out of line haul to the track scale on the majority of the movements to the Southern Pacific can not be estimated accurately, but it would doubtless be considerable, as the diverted movement involves a total distance of 3,660 feet.

The use of a test period of only seven days was necessitated by the fact that respondents were required to submit the cost study within a limited period. The operating costs fluctuate with the number of loaded cars handled, and particularly by the manner in which this traffic is shared by [fol. 76] connections of the Brimstone. In the following statement the number of loaded cars handled by the Brimstone, segregated as between its two connections, during the test period, is compared with similar figures for representative periods equated to seven days:

		Interchanged with Southern Pacific		Interchanged with Kansas City Southern	
	Total handled	Number	Per centage	Number	Per centage
Test period	487	447	91 8	40	8 2
Year 1921	316	280	88 6	36	11 4
Five years ended 1921	360	316	87 8	44	12 2
Five months ended May 31, 1922	365	325	89 1	40	10 9
Six months ended June 30, 1922	382	(1)	(1)	(1)	(1)

(1) Not disclosed by record.

These figures disclose not only that the number of cars handled during the test period was unusually large, but also that the proportion interchanged with the Southern Pacific was considerably above normal. Under the method used in the cost study, the cost per car is greatly affected by the number of cars handled to an individual connection. Typical examples taken from the test period will serve to

illustrate this. On May 27, two cars were interchanged with the Kansas City Southern, requiring 59 minutes engine time; on May 29, 18 cars were interchanged with that carrier, requiring 61 minutes engine time. As the cost per engine-hour was the same in each case, the cost per car differed widely on the two dates. The relatively small number of cars interchanged with the Kansas City Southern during the test period accounts in part for the high cost per car disclosed by the study on such movements.

The principal use which the Brimstone makes of the tracks heretofore described as being owned by the proprietary company, on which 90 per cent of the estimated maintenance, taxes, and interest rental was apportioned to the Brimstone in the cost study, is for the temporary storage of empty and loaded cars. In the operation of loading sulphur, the Brimstone places the empty cars on these tracks, from which they are ordinarily moved by the locomotive of the proprietary company for final spotting on the sulphur-loading tracks. After being loaded they are returned to the storage tracks by the proprietary company's locomotive for movement by the Brimstone locomotive to connections. The full expense of the proprietary company's locomotive while so engaged is charged to the Brimstone in the cost study. The Brimstone admits that the necessity for using these storage tracks "for spotting [fol. 77] empty cars loading in more than one direct movement, is because the facilities for loading in the sulphur bins are inadequate." If these facilities were adequate the Brimstone locomotive could spot the cars in one movement on tracks of the proprietary company, and remove the loaded cars in the same manner. No storage tracks would be required, and the necessity for service by the proprietary company's locomotive would be largely eliminated. In our original report we found that the Brimstone was a common carrier under the interstate commerce act. Irrespective of any arrangement of the two companies for mutual convenience, the Brimstone is under no legal obligation either to perform intraplant switching service for the proprietary company or to reimburse that company for such service when performed by it. Where the facilities of an industry are so constructed that delivery at its plant is rendered

impracticable, the duty of the carrier is fulfilled if it holds itself out to receive and deliver on a convenient interchange track. General Electric Co. v. N. Y. C. & H. R. R. Co., 14 I. C. C., 237. The service of the proprietary company, in moving empty cars from the storage tracks to the sulphur bins and returning such cars, loaded, to the storage tracks, is no part of the common carrier operations of the Brimstone.

The allocation of maintenance to the tracks discussed above in the ratio of 1.5 to 1 per mile is supported solely by the opinions of certain of respondents' witnesses to the general effect that their greater use as compared with other tracks of the proprietary company warrants such a differentiation. No figures for actual maintenance, statistics of cars handled, or other data were submitted. All of these are yard tracks, and judged by ordinary standards, the average maintenance expense of $2,319.18 per mile appears excessive. The average cost of maintenance of all tracks of the Brimstone for the year 1921 was $1,720.93. It is well known that in addition to usage, the action of the elements upon roadway and track is an important factor contributing to the necessity for maintenance. We can not, however, accept the estimate of respondents, supported as it is by mere assumption based on alleged use, as truly reflecting the proportionate maintenance of these tracks.

The allocation of 90 per cent of the computed maintenance, taxes, and interest rental on these tracks to the Brimstone on the basis of alleged use is not warranted. The principal use of this trackage is by the locomotive of the proprietary company in performing service which clearly is intraplant switching. The facts of record indicate that even an equal division of the maintenance, taxes, and interest rental between the two companies would be more than should be assigned to the Brimstone.

[fol. 78] Respondents' original estimates for cost of reproduction new clearly are excessive, because they are based in large part on the peak prices of 1920. The Brimstone urges that we should not use lower values for the purposes of this case than those submitted for cost of reproduction new in the revised valuations. The disparity between the two valuations illustrates the unreliability of estimates of value predicated upon prices prevailing dur-

ing a particular year. The revised valuations may be given consideration only upon the theory that 1922 prices were normal. In its annual report to us for 1921 the Brimstone returned an amount of $519,192.44 for investment in road and equipment as of December 31, 1921. On that date, the Brimstone had on its books accounts covering reserves for depreciation of road and equipment, accrued through periodical charges to operating expenses, the balances of which aggregated $113,317.22, or 22 per cent of the amount reported for investment in road and equipment. The Brimstone charges depreciation on freight cars at the rate of 10 per cent per annum, which presupposes a service life of but 10 years with no allowance for salvage. Respondents seek to justify the use of high rates of depreciation for road and equipment on the apparent ground that sulphur, the principal commodity transported by the Brimstone, is more destructive of such property than other commodities ordinarily moved by carriers. These facts are significant in connection with the contention of the Brimstone that the revised estimated cost of reproduction new should be taken as the basis for its fair return, because it is urged its property "is kept up to a state of highest efficiency by constant maintenance and repairs."

The Brimstone owns 156 freight cars, for the use of which it receives an allowance of 1.5 cents per mile from other carriers. During 1921, $16,987.28 accrued to the Brimstone from this source. During the same period it was charged $7,475.48 covering per diem for the use of foreign freight cars. Respondents did not include these items in the cost study, because under our accounting classifications they are accounted for as nonoperating income. These per diem charges constituted part of the cost of conducting the transportation operations of the Brimstone. The mileage allowance which accrued to that carrier was intended to reimburse it for maintenance, depreciation, and taxes incident to the operation of the cars, and interest on the capital outlay represented by them. Respondents have included in the operating costs of the Brimstone amounts representing maintenance, depreciation, taxes, and interest rental on the value of these cars. The net credit which accrued to that carrier for the rental of freight cars should be deducted from its equated operating costs as allocated to zones.

[fol. 79] There are various traffic, transportation, and general expenses which can not be accepted as bona fide expenses of the Brimstone. It is difficult to understand why a road little more than a switching line should maintain a general office and officials in New York City. It appears that the New York office is maintained principally, if not solely, for the benefit of the proprietary company, but the Brimstone shares in the expense. Surely, the Brimstone has little occasion to solicit traffic, for its the only line that serves the proprietary company whose business constitues almost the whole of the traffic moved by the Brimstone.

The cost figures, in general, may, to some extent, represent a more or less accurate estimate of the average cost of cars interchanged with each connection, and of the average cost of all cars handled, based upon the existing traffic and its disposition during the particular period under consideration. If at any time, however, the total amount of business or its distribution between connections should be materially different, the effect would be to bring about a substantial change in these estimates. The results of the cost studies are by no means conclusive for the purpose of this inquiry and must be examined in the light of other facts in determining the relative cost of service as a basis for prescribing fair and reasonable divisions. The wide disparity shown by these studies between the average cost per car interchanged with the Southern Pacific and the Kansas City Southern is due to two main causes, (1) the difference in the length of haul, and (2) the preponderance of traffic handle in connection with the former as compared with the small proportion interchanged with the latter. As previously stated, the approximate distances from the Brimstone's yard at Sulphur Mine to the Southern Pacific and Kansas City Southern connections are 0.75 mile and 6.64 miles respectively. On the theory that two-thirds of the traffic goes to the Southern Pacific the average haul is 2.71 miles. If a greater volume should go to the Southern Pacific the average would, of course, be reduced. The character of traffic moving between these connections and other conditions being essentially the same, the cost of service between the Kansas City Southern connection is normally higher on account of the greater distance involved. With the cost of service normally higher to this connection, the effect of the present

uniform divisions may have caused the traffic to move in greater volume to the Southern Pacific in the direction of the shortest haul and lowest cost. Other conditions, such as the location of the proprietary company's sulphur docks at Sabine, Tex., on the Southern Pacific rails, have further tended to favor the movement by this line. The effect of the greatly unbalanced distribution of traffic with these roads, as evidenced by the cost studies in this case, has [fol. 80] been to magnify and distort the difference in the relative costs of the movement between these connections which should not normally exist if the business were free to move without prejudice under divisions commensurate with the service performed.

The terminal service, character of traffic, and operating and other conditions being the same in each case, it is obvious that the normal difference in the cost of service for the movement between these two connections should be only that which is due to the greater line haul of 5.59 miles in the interchange with the Kansas City Southern. What the cost of service would normally be under conditions favoring the unprejudiced movement of traffic, as a guide to the establishment of fair and reasonable divisions, is not disclosed by any of the cost studies in this case, but these costs may be fairly approximated from the facts before us and tested to some extent by comparison with the costs of similar service in other localities, as presently will be shown.

Southern Pacific-Kansas City Southern Controversy as to Divisions

The Southern Pacific contends that whatever divisions are reasonably necessary to enable the Brimstone to defray its operating costs and earn a fair return should be established alike on traffic to and from its connections, notwithstanding the difference in costs reflected by the study. This contention is predicated largely upon the theory that if the more costly haul to the Kansas City Southern yields proportionately greater divisions than that to the Southern Pacific, the proprietary company with the routing of 98 per cent of the traffic of the Brimstone in its control, will thereby be induced to route a majority of its shipments by way of the Kansas City Southern in order to obtain in-

creased revenues for its subsidiary. This, it is argued, will result in uneconomical and circuitous routing of traffic, and in the partial, if not total, blocking of the rational and logical avenues of traffic. The record on this subject is somewhat meager. A witness for the Southern Pacific testified that from Sulphur Mine the routes by way of the Kansas City Southern and its connections to Knoxville, Tenn., and Louisville, Ky., were 188 and 128 miles, respectively, greater than by way of the Southern Pacific and its connections. These distances are probably equalized, to a greater or less extent, to other points in the East and Southeast to which there is a movement of sulphur. In Oil from Texas Ports to Sulphur Mine, 69 I. C. C., 345, we permitted the establishment of the same rates on crude and fuel oils, from Port Arthur, Beaumont, and other Texas ports, to Sulphur Mine, by way of both the Southern [fol. 81] Pacific and the Kansas City Southern. The principal movement of sulphur is to Sabine, Tex., which is not reached by rails of the Kansas City Southern. The distances from Sulphur Mine to Port Arthur, which is near Sabine, are approximately 90 miles by way of the Kansas City Southern, and 71 miles by way of the Southern Pacific. On these facts routes by way of the Kansas City Southern are not sufficiently circuitous to be considered wasteful.

The Kansas City Southern argues that the Brimstone divisions should be based on the results of the cost study, which will make the Kansas City Southern divisions higher than those of the Southern Pacific. If uniform divisions were established despite the fact that the cost of service to the Brimstone is greater by way of the Kansas City Southern, the excess would constitute a pecuniary inducement to the proprietary company to route its traffic by way of the Southern Pacific.

The principle is well established that where the cost of service performed by a common carrier industrial line varies substantially as between its different trunk line connections, the divisions of joint rates made by the trunk lines to the industrial line must be based, so far as practicable, upon the cost of the service in each case, plus fair return. Tap Line cases, 234 U. S., 1; O'Keefe v. United States, 240 U. S., 294; Chicago, West Pullman & Southern R. R. Co. case, 37 I. C. C., 408; Allowances to Kanawha, Glen Jean &

Eastern, 58 I. C. C., 405; Northampton & Bath R. R. Co. case, 41 I. C. C., 68. Otherwise, if the divisions accorded for the greater service were reasonable, the same divisions accorded for a lesser service would amount substantially to a rebate to the proprietary company. Irrespective of the weight to be given the cost study of respondents the separation of the cost of the service as between connections does not truly reflect the differences which should exist as between the divisions of those two connections, because they are based upon the present divisions which would seem to encourage movement to the Southern Pacific. The high cost per car on movements to the Kansas City Southern results principally from the relatively small movement to that carrier. The distance to the Kansas City Southern is, on the average, about 6 miles, as compared with less than 1 mile to the Southern Pacific, and if the same number of cars moves to both carriers, the disparity in the cost per car as between the two services would not be so pronounced. This is an important fact for consideration, where, in a case of this kind, the divisions to be established will tend to change somewhat the existing relations of competitive carriers.

[fol. 82] We have prescribed maximum reasonable charges per car for intra-terminal, short haul, or switching movements more or less similar to the movements here considered in a great many instances, although the transportation circumstances and conditions in many of these instances were appreciably more adverse than in the instant case. In a number of those cases the evidence was insufficient to condemn a $15 minimum charge per car established by the director general, and in a few cases even higher charges were held to be reasonable. Schram Glass Mfg. Co. v. Director General, 61 I. C. C., 435; Armour & Co. v. D., L. & W. R. R. Co., 66 I. C. C., 445; Premier Coal Co. v. Director General, 80 I. C. C., 85; and others. Many of these $15 minimum charges per car were subsequently reduced voluntarily by the director general or by the carriers where the distances were short and the services limited. The following table is typical of the lower charges per car which we found reasonable during Federal control for distances somewhat similar to those in the instant case:

	Distance	Rate per car
Crucible Steel Co. v. Director General, 61 I. C. C., 753	1 mile	$2 50 to $5.
Utah Fuel Co. v. Director General, 80 I. C. C., 229	do	$2 50.
Swift & Co. v. Director General, 69 I. C. C., 695; 77 I. C. C., 189	9 miles	$5.
Missouri Portland Cement Co. v. Director General, 64 I. C. C., 243	4 to 7 miles	$5.
Carney Cement Co. v. Director General, 73 I. C. C., 735	6,800-7,300 feet	$6.
New Orleans Board of Commissioners v. Director General, 77 I. C. C., 664	5.2 to 7.75 miles	$6 50.
Illinois Steel Co. v. Director General, 62 I. C. C., 349	2.25 miles	$6 50.
Boldt Glass Co. v. Director General, 64 I. C. C., 619	4 to 5 miles	$6 50 to $10.
Hilb & Bauer v. Director General, 66 I. C. C., 279	11.5 to 20 miles	$6 50 to $10.
Rogers-Brown Iron Co. v. Director General, 59 I. C. C., 186	0.5 to 1.5 miles	$7 50.
Pequest Co. v. Director General, 61 I. C. C., 16	1 mile	$7 50.
Peerless Portland Cement Co. v. Director General, 61 I. C. C., 169	32 miles	$7 50.
Glencoe Lime & Cement Co. v. Director General, 69 I. C. C., 243	1.5 miles	$8.

The above charges subjected to the general increases of 1920 and the 10 per cent reductions of 1922 would result in charges ranging from about $3 to $11.50 per car. The charges for the service under consideration are not to be measured by charges in other territories where the transportation conditions are more favorable but the charges instanced in the above table relate to all of the territories in the country. We are convinced that the services here involved are performed under favorable circumstances, and more favorable than in many of the cases cited.

Conclusions

The present divisions accruing to the Brimstone are as follows:

Sulphur, when destined to Port Arthur, Sabine or Galveston, Tex., New Orleans, Gretna or Algiers, La., for coastwise movement or for export, 24.3 cents per gross ton, equivalent to approximately 1.085 cents per 100 pounds.
[fol. 83] Sulphur, when destined to points other than those shown above, 2.7 cents per 100 pounds.
Fuel oil, 1.2 cents per 100 pounds.
Brick, coal and stone, 2.4 cents per 100 pounds.
Cement, 3 cents per 100 pounds.
All other carload traffic, 3.6 cents per 100 pounds.
Merchandise, less than carloads, 12 cents per 100 pounds.

Some service is necessary in case of sulphur moving all rail from Sulphur Mine which is not required in connection with the movement of that commodity to Sabine, but it is not of sufficient importance to justify a difference in divisions. The record does not disclose the reasons underlying the differences which exist in the present divisions of the Brimstone as between various commodities; neither does it afford a basis for a similar difference in the future.

The evidence relates principally to the cost of handling carload shipments. The volume of less-than-carload shipments is very small but the record shows that the service performed on such shipments to the Kansas City Southern connection is substantially greater than to the Southern Pacific connection, to which a very meager service is required.

Based upon the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, we find that during the period from August 1, 1921, to but not including July 1, 1922, just, reasonable, and equitable divisions to the Brimstone would have been:

From the Southern Pacific:

On all carload traffic $7.78 per car; on merchandise, less than carloads, 11.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic $10 per car; on merchandise, less than carloads, 15.5 cents per 100 pounds.

We further find that on and after July 1, 1922, just, reasonable, and equitable divisions to the Brimstone were, are, and for the future will be:

From the Southern Pacific:

On all carload traffic, $7 per car; on merchandise, less than carloads, 10.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $9 per car; on merchandise, less than carloads, 14 cents per 100 pounds.

We further find that the divisions received by the Brimstone should be adjusted on a basis not in excess of the charges above found just, reasonable, and equitable during the periods named.

[fol. 84] Nothing herein contained shall be construed as an indication of the value of the property which we may determine under section 19 (a) of the act.

An appropriate order will be entered.

EASTMAN, Commissioner, dissenting:

In my opinion the divisions prescribed by the majority are somewhat too high.

[fol. 85] Order

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 10th Day of March, A. D. 1924

No. 12969

Divisions Received by Brimstone Railroad & Canal Company

A hearing and investigation of the matters involved in this proceeding having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That during the period from August 1, 1921, to but not including July 1, 1922, the divisions of interstate joint rates received by the Brimstone Railroad & Canal Company, hereinafter termed the Brimstone, on freight traffic interchanged with the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, hereinafter termed the connecting lines, shall be adjusted so as not to exceed the following amounts:

From the Louisiana Western Railroad Company:

On all carload traffic, $7.78 per car; on merchandise, less than carloads, 11.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $10 per car; on merchandise, less than carloads, 14 cents per 100 pounds.

It is further ordered, That on and after July 1, 1922, the divisions of interstate joint rates received by the Brimstone on freight traffic interchanged with connecting lines shall be adjusted so as not to exceed the following amounts:

From the Louisiana Western Railroad Company:

On all carload traffic, $7 per car; on merchandise, less than carloads, 10.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $9 per car; on merchandise, less than carloads, 10.5 cents per 100 pounds.

And it is further ordered, That this order shall take effect as of August 1, 1921, and shall continue in force until the further order of the commission.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 86] Exhibit "D" to Bill of Complaint

Application for Rehearing on and Suspension of Order of March 10, 1924

[fol. 87] Before the Interstate Commerce Commission

Docket No. 12969

Divisions Received by the Brimstone Railroad & Canal Company

Now comes the Brimstone Railroad and Canal Company, respondent in the above entitled proceedings, and respectfully petitions the Commission to grant a rehearing therein and in support of said petition, respectfully shows:

I

That on April 5, 1924, the Commission released and served upon respondents, its order dated the 10th day of March, 1924, in the above entitled proceeding.

II

That the said order of the Commission provides:

"That during the period from August 1, 1921, to, but not including July 1, 1922, the division of interstate joint rates received by the Brimstone Railroad and Canal Company, hereinafter termed the Brimstone, on freight traffic interchanged with the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, herein

after termed the connecting lines, shall be adjusted so as not to exceed the following amounts:

From the Louisiana Western Railroad Company:

On all carload traffic, $7.78 per Car.
On Merchandise, less than carloads, 11.5 cents per 100 Pounds.

From the Kansas City Southern Railroad Company:

On all carload traffic, $10.00 per Car.
On Merchandise, less than carloads, 15.5 cents per 100 Pounds.

The order further provides:

"That on and after July 1, 1922, the divisions of interstate joint rates received by the Brimstone on freight traffic interchanged with connecting lines shall be adjusted so as not to exceed the following amounts:

From the Louisiana Western Railroad Company:

On all carload traffic, $7.00 per Car.
On Merchandise, less than carloads, 10.5 cents per 100 Pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $9.00 per Car.
[fol. 88] On Merchandise, less than carloads, 14 cents per 100 Pounds."

The said order further provides:

"That this order shall take effect as of August 1, 1921, and shall continue in force until the further order of the Commission."

III

That the divisions so prescribed in the order of the Commission applied to the actual movement of the freight traffic over the Brimstone Railroad during the period from August 1, 1921, to but not including July 1, 1922, and the divisions prescribed in the said order of the Commission applied to all freight traffic moving over the said Brimstone Railroad during the period on and after July 1, 1922,

and to future movements of traffic, are and will be unreasonable, unjust, confiscatory, and in violation of the Fifth Amendment to the Constitution of the United States, in that the said order deprives and will deprive the Brimstone Railroad and Canal Company, respondent, of its property without due process of law.

IV

That no complaint of damage by any shipper or carrier by reason of the divisions of joint rates which have been received by the Brimstone Railroad and Canal Company has been made to the Commission, and the power of the Commission to award reparation is limited to cases where actual damage has been shown to have followed the charging, demanding and receiving of unreasonable and excessive freight charges. The order of the Commission in this case is in effect an award of reparation against the Brimstone Railroad and Canal Company in a case where no reparation is or could be claimed, and where none is or can be due, because during the period covered by the order no unreasonable divisions, rates or charges were demanded, received or collected by the Brimstone Railroad and Canal Company.

V

The said order of the Commission deprives and will deprive the Brimstone Railroad and Canal Company, respondent, of its property without due process of law; takes its property without adequate compensation for the benefit of its connections, who are not complaining and have not complained that the divisions paid by each of them to the Brimstone Railroad and Canal Company are unreasonable, unjust, excessive, discriminatory, or in any manner unlawful.

[fol. 89]

VI

That the said order of the Commission takes and will take the property of the Brimstone Railroad and Canal Company, respondent, without due process of law, and denies to said respondent the equal protection of the laws, in violation of the Constitution of the United States, in the following particulars, viz:

(1) Based on the divisions prescribed in the said order of the Commission on the traffic received from and forwarded via the Southern Pacific connection, the Brimstone Railroad and Canal Company's revenue on such traffic for the periods stated would have been as follows:

August 1, 1921, to June 30, 1922, inclusive:

Received from Southern Pacific Connection:

6177 cars @ $7.78 per car	$48,057 06
Mdse. 1,727,566 pounds @ 11.5 cwt.	1,986 70

From July 1, 1922, to December 31, 1923, inclusive:

Received from the Southern Pacific:

9893 cars @ $7.00 per car	$69,251 00
Mdse. 2,912,928 pounds @ 10.5 cwt.	3,058.87

Forwarded via Southern Pacific:

August 1, 1921, to June 30, 1922, inclusive:

9592 cars @ $7.78 per car	$74,625 76
Mdse. 89,779 pounds @ 11.5 cwt.	103 27

From July 1, 1922, to December 31, 1923, inclusive:

19,216 cars @ $7.00 per car	$134,512 00
Mdse. 6,439,166 pounds @ 10.5 cwt.	6,761 12

Total revenue from all freight handled to and from Southern Pacific connection during the period from August 1, 1921, to December 31, 1923, if the divisions prescribed by the Commission had been applied on such traffic, $338,355.78.

During the same periods, on all traffic handled to and from the Kansas City Southern connection, the Brimstone Railroad and Canal Company, on the divisions prescribed by the Commission, would have received the following revenue:

August 1, 1921, to June 30, 1922, inclusive:

711 cars @ $10.00 per car	$7,110 00
Mdse. 92,243 pounds @ 15.5 cwt.	142 98

July 1, 1922, to December 31, 1923, inclusive:

3116 cars @ $9.00 per car	$28,044 00
Mdse. 176,952 pounds @ 14 cwt.	247 73

[fol. 90] Forwarded via Kansas City Southern:

August 1, 1921, to June 30, 1922, inclusive:

1484 cars @ $10.00 per car	$14,840 00
Mdse. 385 pounds @ 15.5 cwt.	.60

July 1, 1922, to December 31, 1923, inclusive:

2259 cars @ $9.00 per car	$20,331 00
Mdse. 524 pounds @ 14 cwt.	.73

Total revenue that would have been received on all traffic moving to and from the Kansas City Southern connection for the period from August 1, 1921, to December 31, 1923, if the divisions prescribed in the said order of the Commission had been applied, $70,717.94.

The grand total revenue that would have been received by the Brimstone Railroad and Canal Company on all traffic to and from both the Southern Pacific and the Kansas City Southern connections for the period from August 1, 1921, to December 31, 1923, on the basis of the divisions prescribed in said order of the Commission, $409,072.82.

During the period from August 1, 1921, to December 31, 1923, the total operating expenses and taxes of the Brimstone Railroad, including all of the adjusted items for the years 1922 and 1923 only, as shown in respondent's cost study, amounted to $533,971.15.

On the basis of the revenue which would have been received by the Brimstone had the divisions prescribed in said order of the Commission been applied during the said period, the net deficit in the operating expenses of the Brimstone Railroad for that period would be $114,898.33.

The above figures show the revenues which would have been received by the Brimstone under the rates prescribed by the Commission in its said order dated March 10, 1924, based upon the interline settlements between the Brimstone and its connecting carriers during the periods mentioned, which is the same basis as is used in compiling returns included in the annual reports of respondent to the Commission. These figures show that the revenues based on the per car divisions fixed by the Commission in its said order were not and will not be sufficient to pay the operating expenses and taxes of the Brimstone, exclusive of any return on the fair value of its properties.

The Commission's report and said order of March 10, 1924, disallows certain items which were included in the cost study without stating the exact sum of the items so excluded, but without attempting to separate such items, [fol. 91] and re-allocate such expenses, on the basis indicated in the Commission's said report and order, and completely disregarding the total sum of $25,972.69, which was not included in the audited accounts of the Brimstone for 1921, but which petitioner contends covers items essential to its common carrier operations during that year, and deducting the said amount of $25,972.61 from the operating expenses of the Brimstone for each of the years 1922 and 1923, there still would remain a net deficit to the Brimstone Railroad for the period from August 1, 1921, to December 31, 1923, as shown by the following figures:

Total operating expenses and taxes, August 1, 1921, to December 31, 1923	$523,971 15
Total revenue from August 1, 1921, to December 31, 1923, based on the divisions prescribed in the Commission's order of March 10, 1924	409,072 82
Deficit on above basis	$114,898 33

Deducting from the said deficit of $114,898.33, the sum of $51,945.38, or twice the sum of $25,972.69, not included in the audited accounts of the Brimstone for the year 1921, there still would remain a net deficit in the operating expenses of the Brimstone Railroad for the period from August 1, 1921, to December 31, 1923, based on the divisions fixed by the Commission as the basis for adjustment during that period of $62,952.95.

The operating expenses and taxes upon which the above loss to the Brimstone Railroad under the divisions prescribed in its said order of March 10, 1924, is computed are exclusive of and without taking into consideration any return on its railroad property held for and used in the service of transportation.

Further deductions could be made to meet any additional expenses for the back haul to the track scale, which this respondent in no manner admits by this assertion to be

justly deductible, and still there would remain a substantial deficit in the operations of the Brimstone Railroad for the period above referred to if the divisions named in the Commission's order are applied during said period.

VII

The sulphur which moves over the Brimstone and Southern Pacific to Sabine, Texas, moves in gondola cars, and is destined to the terminals of the Union Sulphur Company, the proprietary company. These terminals are served only by the Southern Pacific, and any diversion of such tonnage to Port Arthur is not only economically unsound but impossible because there are no facilities at Port Arthur for handling. Shipments of sulphur for coastwise and export must all move via the Brimstone and Southern Pacific to Sabine, Texas, and continue to move in the same manner [fol. 92] because no other rails reach Sabine. These shipments will bear, under the order of the Commission, on and after July 1, 1922, a rate of $7.00 per car. While under the Commission's adjustment of divisions, a somewhat increased movement of box car traffic may move via the Kansas City Southern, no change can be made in the movement of sulphur to Sabine, so that the effect of the higher division via the Kansas City Southern connection upon the revenues of the Brimstone is more theoretical than real.

VIII

That in compliance with the orders of the Commission various cost studies were made by the respondents and filed showing the cost of handling traffic to the Southern Pacific and Kansas City Southern connections. The Commission in its said report and order sets forth the results of these studies and on page 67 of its report says:

"Upon the basis of these revised valuations respondent's figures show the costs per car during the test period, including return, were as follows: Based on reproduction new, Southern Pacific $7.2755, Kansas City Southern $23.6853, average $8.6232; based on reproduction less depreciation, Southern Pacific $6.9778, Kansas City Southern $22.4485, average $8.2484."

Notwithstanding the above statement the Commission proceeded in its said report and order to fix divisions to be used as the basis for adjustment on traffic already handled which are below the actual cost of handling said traffic based upon the cost per car as shown by said cost studies.

IX

The above facts could not have been ascertained prior to the naming of the divisions by the Commission in its final order, and consequently the Brimstone Railroad and Canal Company, respondent, has had no previous opportunity to present these figures and results to the Commission, all of which are based upon the divisions which are fixed in the said order to apply from and after August 1, 1921. The operating expenses would not, of course, be affected by the past revenues.

X

From the above it will be seen that the said order of the Commission is erroneous in that if the divisions therein prescribed are applied as the basis for adjustment during the period from August 1, 1921, to December 21, 1923, and subsequently, the Brimstone will be compelled to surrender its property to its connections, and be required to actually perform its common carrier services at a loss without taking into consideration the value of its property, or its investment.

[fol. 93] Wherefore, the Brimstone Railroad and Canal Company, petitioner, prays that a rehearing be granted in the above entitled case, that pending the consideration of and final order on this application for rehearing the order of March 10, 1924, released April 5, 1924, herein, be suspended; that said order be modified so as to apply only to the future, and that the divisions therein fixed be amended and modified so as to allow petitioner sufficient revenue to pay its operating expenses, taxes, and a fair return upon its railway property held for and used in the service of transportation; and, that the commission enter such further

order or orders in the premises as to it may seem reasonable and just.

April 12th, 1924.

Brimstone Railroad and Canal Company, by James T. Kilbreth, General Counsel. C. R. Liskow, W. M. Barrow, Attorneys.

Copies of the above application for rehearing have been served upon all parties of record as shown in the Commission's report and order dated March 10, 1924.

W. M. Barrow, Attorney.

[fol. 94] Revenue Collected from Aug. 1st, ——— to Dec. 31st, 1923

Received from Southern Pacific Aug. 1st, 1921, to June 30th, 1922

4	cars	cement	372,780#	at 3.4c	126.75
5,823	"	fuel oil	364,024,980#	at 1.3c	47,401.25
166	"	brick, coal & ltr	11,088,080#	at 2.7c	3,133.64
184	"	other carloads	11,741,560#	at 4c	4,696.62
		Misc.	1,727,760#	at 13.5c	2,332.21

July 1st, 1923, to Dec. 31st, 1923

7	cars	cement	530,180#	at 3.1c	109.22
9,451	"	fuel oil	568,714,020	at 1.2c	68,245.75
115	"	brick, coal, ltr	7,654,620#	at 2.4c	1,837.11
218	"	other carloads	20,556,780#	at 3.6c	7,400.08
		Misc.	2,912,928#	at 12.1c	3,524.64
		Total			$138,979.48

Forwarded to Southern Pacific Aug. 1st, 1921, to June 30th, 1922

1,201	cars	sulphur	94,011,280#	at 3c	28,203.38
8,258	"	sulphur (Sabine)	886,811,432#	at 27c a T	119,689.43
73	"	other carloads	4,088,920#	at 4c	1,800.77
		Misc.	80,700#	at 13.5c	121.23

July 1st, 1922, to Dec. 31, 1923

2,385	cars	sulphur	220,500,100#	at 2.7c	59,561.76
16,787	"	sulphur (Sabine)	1,854,977,210#	at 24.5c a T	199,660.20
12	"	brick, coal, ltr	452,100#	at 2.4c	108.50
112	"	other carloads	6,439,100#	at 3.6c	2,318.10
		Misc.	262,235#	at 12.1c	317.30
		Total			$398,451.71
		Grand Total			537,431.19

[fol 95] Revenue Collected from Aug. 1st, 1921, to Dec. 31st, 1923

Received from Kansas City Southern Aug. 1st, 1921, to June 30th, 1922

1	car	cement	76[illegible]	@ 3.4c	$25.84
625	"	fuel oil	57,258,420[illegible]	@ 1.3c	7,443.60
34	"	brick, coal & Bo	2,058,426	@ 2.7c	555.70
51	"	other carloads	3,124,778	@ 4c	1,249.91
		Misc	92,243	@ 13.5c	124.53

July 1st 1922 to Dec. 31, 1923

2	cars	cement	100,3[illegible]	@ 3.1c	31.10
2,880	"	fuel oil	177,331,881	@ 1.2c	21,280.19
68	"	brick, coal & Bo	4,710,844	@ 2.4c	1,130.60
147	"	other carloads	8,800,478	@ 3.6c	3,280.57
		Misc	170,1[illegible]	@ 12.2c	215.88
		Total			$30,257.92

Forwarded to Kansas City Southern Aug. 1st, 1921, to June 30th, 1922

1,230	cars	Sulphur	99,886,040[illegible]	@ 3c	$29,958.80
172	"	Sulphur (P. A.)	16,045,880	@ 27c G. T.	1,934.10
5	"	brick, coal & Bo	342,100	@ 2.7c	92.37
17	"	other carloads	1,186,125	@ 4c	474.45
		Misc	385	@ 13.5c	.52

July 1st, 1922, to Dec. 31st, 1923

1,818	cars	sulphur	154,141,224	@ 2.7c	41,618.13
428	"	sulphur (P. A.)	41,067,240	@ 24.5c G. T.	4,685.54
15	"	other carloads	725,065	@ 3.6c	1,262.68
		Misc	524	@ 12.2c	.64
		Total			$79,017.42
		Grand Total			$114,275.34

[fol 96] Revenue Based on I. C. C. New Rate Received from Southern Pacific Aug. 1st, 1921, to June 30th, 1922

9,177	cars			@ 7.7c	$48,957.06
Misc	1,727,[illegible]			@ 11.5c	1,986.70

July 1st, 1922, to Dec. 31, 1923

9,800	cars			@ 7.0c	$9,251.40
Misc	2,501,2[illegible]			@ 10.5c	3,058.87

Forwarded to Kansas City Southern Aug. 1st, 1921, to June 30th, 1922

9,592	cars			@ 7.7c	$4,625.76
Misc	80,700			@ 5c	103.27

July 1st, 1922, to Dec. 31, 1923

19,216 cars	@	7.00	134,512.00
Mdse. 6,439,106	@	0.5c	6,761.12
Total			$838,355.78

Received from Kansas City Southern Aug. 1st, 1921, to June 30th, 1922

711 cars	@	10.00	7,110.00
Mdse. 92,2432	@	15.5c	142.98

July 1st, 1922, to Dec. 31, 1923

31,116 cars	@	9.00	28,044.00
Mdse. 176,953	@	14c	247.73

Forwarded to Kansas City Southern Aug. 1st, 1921, to June 30th, 1922

1,484 cars	@	9.00	20,331.00
Mdse. 3852	@	15.5c	.60

July 1st, 1922, to Dec. 31, 1923

2,259 cars	@	9.00	20,331.00
Mdse. 5242	@	14c	.73
Total			$70,717.04
Grand Total			$909,072.82

[fol 97] Operating Expenses

August 1, 1921 to Dec. 31, 1921	$75,130.83
Jan. 1, 1922 to June 30, 1922	70,177.24
July 1, 1922 to Dec. 31, 1922	118,901.52
Jan. 1, 1923 to June 30, 1923	117,144.45
July 1, 1923 to Dec. 31, 1923	130,520.10
Total	$523,971.15
Revenue from August 1, 1921 to December 31, 1923, based on I. C. C. new rate	909,072.82
Deficit	114,898.33

[fol. 98] EXHIBIT "E" TO BILL OF COMPLAINT

[fol. 99] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 12969

Divisions Received by the BRIMSTONE RAILROAD & CANAL COMPANY

Exceptions to the Jurisdiction of the Commission and Brief in Support Thereof

Now comes the Brimstone Railroad & Canal Company, respondent, and excepts to the prescribing by the Interstate Commerce Commission of Divisions received by the Brimstone Railroad & Canal Company for the period subsequent to the making of the order of investigation herein, except as the divisions to be prescribed may apply after final order is made in this proceeding, on the following grounds, to-wit:

I

That the Commission is without jurisdiction and authority to prescribe the just, reasonable and equitable divisions of joint rates applicable to the transportation of property by the Brimstone Railroad & Canal Company, subsequent to the making of the order of investigation herein, except for future application, because this is not a case where the joint rates or charges were established pursuant to a finding or order of the Commission in which the divisions thereof were found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, and also for the following reasons:

[fol. 100] II

The Brimstone Railroad & Canal Company has paid to the Interstate Commerce Commission for the year 1921 the sum of Five Thousand, Seven Hundred and Seventy-Four and 73/100 ($5,774.73) dollars, and for the year 1922 the sum of Twenty-One Thousand, Seven Hundred and Thirty-One and 40/100 ($21,731.40) dollars, respectively, based upon one-half of its net railway operating income in excess of six (6%) per centum of the value of its railway prop-

erty held for and used in the service of transportation, and has placed the remaining one-half of such excess income in a reserve found established and maintained by respondent, both of which sums were recovered and paid under Section 15 (a) of the Interstate Commerce Act as amended by the Transportation Act of 1920, and by reason of the payment of such excess income and the establishment of such reserve fund, the divisions received by the Brimstone Railroad & Canal Company for the years 1921 and 1922 have been adjusted by the Commission and established by law.

III

The Brimstone Railroad & Canal Company has been called upon by the Interstate Commerce Commission to pay to the Commission one-half of its net railway operating income in excess of six (6%) per centum of the value of its railway property, held for and used in the service of transportation for the year ended December 31, 1923, and the matter is now being held in abeyance by the Brimstone Railroad & Canal Company and the Interstate Commerce Commission to be recovered by and paid to the Interstate Commerce Commission whenever the net railway operating [fol. 101] income of the Brimstone Railroad & Canal Company, based upon the value of the railway property held for and used by it in the service of transportation for the year ended December 31, 1923, has been finally determined.

IV

The Brimstone Railroad & Canal Company will be called upon to pay the Interstate Commerce Commission one-half of its net railway operating income in excess of six (6%) per centum of the value of its property held for and used in the service of transportation for the years ending December 31, 1924, and December 31, 1925, respectively, whenever the fair value of the said property and the net railway operating income for those years have been finally determined.

V

Wherefore, the Brimstone Railroad & Canal Company prays that those exceptions be sustained; that as to the

divisions it has received prior to the final order issued in this case it should be henceforth dismissed, and that such divisions be not affected or disturbed by any final order which the Commission may make in this case fixing and establishing divisions to be received by the Brimstone Railroad & Canal Company for future application.

Brimstone Railroad & Canal Co., James T. Kilbreth, General Attorney. Cullen R. Liskow, Attorney. Wylie M. Barrow, Special Counsel.

Baton Rouge, La., April 20, 1925.

[fol. 102] Citations

Dayton-Goose Creek Railroad Co. vs. U. S., 263 U. S. 456, 68 L. ed. 388	12, 13, 15, 16
Divisions Received by the Brimstone Railroad & Canal Co., 88 I. C. C. 62, 72	5, 8
Divisions Received by the Brimstone Railroad & Canal Co., 68 I. C. C. 375	8
Ex Parte, 74, Increased Rates, 1920	11, 15
Reduced Rates, 1922, 68 I. C. C. 676	9, 11, 15

[fol. 103] Interstate Commerce Commission

Docket No. 12969

Division Received by the Brimstone Railroad & Canal Company

Brief and Argument on Behalf of the Brimstone Railroad & Canal Company, Respondent, in Support of the Exceptions to the Jurisdiction of the Commission to Make a Retroactive Order

On March 10, 1924, the Commission made a report in this case in which it was stated that:

"Based upon the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, we find that during the period from August 1, 1921, to but not including July 1, 1922, just, reasonable and equitable divisions to the Brim-

stone would have been: (Here follows certain specific divisions * * *."

"We further find that on and after July 1, 1922, just reasonable and equitable divisions to the Brimstone were, are and for the future will be:" (Here follows certain specific divisions).

The Commission further said:

"We further find that the divisions received by the Brimstone should be adjudged on a basis not in excess of the charges above found just reasonable and equitable during the periods named." (88 I. C. C. 62, 75.)

An order followed, putting into effect the findings and divisions so found to be just, reasonable and equitable to the Brimstone, and finally decreed,

[fol. 104] "That this order shall take effect as of August 1, 1921, and shall continue in force until further order of the Commission."

Subsequently, on petition of the Brimstone Railroad & Canal Company, the order of March 10, 1924, was suspended by the Commission and the case re-opened for the purpose of allowing the Commission opportunity to make additional cost studies of the Brimstone Railroad, and of holding further hearings in order to determine the just, reasonable and equitable divisions to the Brimstone.

Additional cost studies have been made, and the exhibits containing the results of the studies as made by the representatives of the Commission, as well as additional exhibits prepared by the Brimstone, have been filed with the Commission, and furnished the parties of record, and the case is assigned for further hearing before Examiner Trezise, at New Orleans, Louisiana, beginning May 4, 1925.

The exceptions which this brief supports are filed in order to bring to the attention of the Commission, prior to the hearing on May 4, the respondent's contentions regarding the retroactive feature of the order of March 10, 1924, which phase of the case was not argued by anyone appearing at the former hearings and arguments held in the case. The tentative report filed by a former examiner, which was the subject of argument held before the entire Commission in Washington, on July 11, 1923, did not rec-

ommend retroactive divisions or adjustment of divisions, but recommended only just reasonable and equitable divisions to the Brimstone for future application. For that [fol. 105] reason, this important phase of the case received no attention in the arguments presented. No one filing exceptions raised any issue on the point, and it was felt that the position taken in the Examiner's tentative report was so sound and proper that argument seemed unnecessary.

However, in the petition to reopen the case, filed by the Brimstone shortly after the order of March 10, 1924, was served, in which we showed that, based upon past operations of the Brimstone, the divisions prescribed by the Commission in that order would prove confiscatory, we asked not only that said order be suspended, but specifically prayed

"that said order be modified so as to apply only to the future."

Exception 1

The Commission is without jurisdiction and authority to prescribe the just, reasonable and equitable divisions of joint rates applicable to the transportation of property by the Brimstone Railroad & Canal Company subsequent to the making of the order of investigation herein, except for future application, because this is not a case where the joint rates or charges were established pursuant to a finding or order of the Commission in which the divisions thereof were found by it to have been unjust, unreasonable or inequitable, or unduly preferential or prejudical.

The original order of investigation in this case was dated August 1, 1921. After hearings, a proposed report was filed by an Examiner. Exceptions were filed to the pro- [fol. 106] posed report, and the case was orally argued. In the original report, 68 I. C. C. 375, the Commission found:

"that the Brimstone Railroad & Canal Company, hereinafter called the Brimstone, was a common carrier of property subject to the interstate commerce act, entitled lawfully to receive just and reasonable division of rates jointly established by its trunk line connections under appropriate tariff provisions, and that 'the divisions of joint rates now

received by the Brimstone from the two other respondents on interstate traffic *are and for the future* will be unjust, unreasonable, inequitable, and to the extent that they exceed or may exceed the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, are excessive, and, in effect, amount to a rebate to the proprietary company." (Our italics.)

The language used by the Commission in its original report, 68 I. C. C. 375, quoted by the Commission in its report of March 10, 1924, 88 I. C. C. 62, indicated that the Commission was then considering divisions of joint rates for the future, for the report plainly stated that

"The divisions of joint rates received by the Brimstone from the two other respondents on interstate traffic are and for the future will be unjust," etc.

The record was held open for ninety (90) days to permit respondents to make necessary cost studies for the purpose of arriving at reasonable divisions to the Brimstone. These cost studies were made and the case was then set for further hearing in order to fix just, reasonable and equitable divisions to be received by the Brimstone (68 I. C. C. 675).

It was not, therefore, until the Commission's order of March 10, 1924, was served upon the respondents that they [fol. 107] had any knowledge that the Commission would prescribe divisions for the Brimstone subsequent to its order of investigation dated August 1, 1921, for the period prior to the date of the final order to be entered in this case. The joint rates in effect on interstate traffic in which the Brimstone participates were established long prior to the original order of investigation. The divisions which were being received by the Brimstone when the investigation was ordered and at a time of the first hearing held on October 18-19, 1921, at Washington, D. C., were fixed by the Railroad Administration, and advanced in accordance with the Commission's decision in Ex Parte 74, with certain minor exceptions on intrastate divisions. The original divisions which were in existence when the investigation in this case was ordered was explained by Mr. Jos. Lallande, General Agent, M. L. & T. R. R. & S. S. Co., in his testimony on pages 241, et seq., of the record.

Under date of May 15, 1922, the Commission issued its report in Reduced Rates, 1922, 68 I. C. C. 676. After determining that 5.75 per cent would constitute a fair annual return upon the aggregate value of the railway property of the carriers defined in Section 15 (a) of the interstate commerce act, the Commission said:

"That the existing freight rates and charges, including charges for switching and other accessorial services and all other charges applicable to freight service which were increased by authority of Increased Rates, 1920, *supra*, will be on and after July 1, 1922, unjust and unreasonable to the extent that they may respectively include more than the following percentages of increase over the rates in effect immediately prior to August 26, 1920, in and between the [fol. 108] various rate groups as defined in Increased Rates, 1920, 58 I. C. C. 220, 489, and Authority to Increase Rates, ibid., 502."

No formal order was made, but the carriers were admonished to advise the Commission not later than May 31, 1922, if possible, whether the findings made in Reduced Rates, 1922, would be carried into effect without formal order by the Commission. The time for making the reductions effective was extended to July 1, 1922.

The Brimstone complied with the report, as did the other respondents therein, and its divisions of joint rates were reduced accordingly.

The Commission having thus prescribed just and reasonable divisions to be received by the Brimstone for the period from and including July 1, 1922, had thus prior to final order in this case caused an adjustment of the divisions, leaving nothing to be determined, except the just, reasonable and equitable divisions of the Brimstone for the future. The maximum which the Brimstone could earn after its compliance with the report in Reduced Rates, 1922, was 5.75 per cent on the value of its property used in the service of transportation, and the facts in this case, as pointed out in our petition to suspend the order of March 10, 1924, and reopen the case, show that it had not earned more than the fair return under the divisions as affected by the Commission's findings.

On the other hand, if the Commission should hold that it did not fix just, reasonable and equitable divisions to be

received by the Brimstone from its connecting carriers on and after the dates on which the advances in *Ex Parte* 74 and the reduction in Reduced Rates, 1922, became effective, [fol. 108] then there has been no case where the joint rates in effect over the Brimstone were established pursuant to a finding or order of the Commission in which the divisions thereof were found by it to have been unjust, unreasonable or inequitable or prejudicial.

In both *Ex Parte* 74 and Reduced Rates, 1922, *supra*, the Commission was dealing with the carriers as a whole and there was no finding in either of these cases that the divisions of the Brimstone were unjust, unreasonable or inequitable or unduly preferential or prejudicial.

We submit, therefore, that the Commission is without jurisdiction or authority to prescribe divisions in this case on traffic that has already moved under joint interstate rates and divisions that were prescribed as just and reasonable by the Railroad Administration from August 1, 1921, but not including July 1, 1922, and as affected by the reports of the Commission in Increased Rates, 1920, *Ex Parte* 74, and in Reduced Rates, 1922, after July 1, 1922.

Exception No. 11

If, however, the Commission should hold that it has jurisdiction to fix just, reasonable and equitable divisions for the Brimstone railroad for the period subsequent to the making of the order of investigation and require adjustment to be made in accordance therewith on freight interchanged with the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, its connecting lines, we submit that under Section 15 (a) of the interstate commerce act, the Commission is without jurisdiction or [fol. 110] authority to further reduce the divisions received by the Brimstone Railroad & Canal Company during the period from August 1, 1921, to the effective date of its final order for the reason that the Brimstone Railroad & Canal Company has paid the Interstate Commerce Commission for the account of the government for the year ended December 31, 1921, the sum of $5,744.73, and for the year ended December 31, 1922, the sum of $21,731.40, based on one-half of the net railway operating income of the Brimstone in excess of 6 per cent of the value of the rail-

way property held for and used by it in the service of transportation, and the Brimstone has placed the remaining one-half of such net railway operating income in a reserve fund established and maintained by it. The sums paid to the Commission for the years 1921 and 1922, respectively, were paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as described in Section 15 (a).

Thus the excess railway operating income of the Brimstone for the years 1921 and 1922 have been appropriated by the government to the extent set forth in the interstate commerce act and the remainder of the excess income is held in trust by the carrier and is only available to it for the purposes set forth in paragraph 7, Section 15 (a).

In Dayton Goose Creek Railroad Co. vs. United States, 263 U. S. 456, 68 L. ed. 388, the Supreme Court, through Chief Justice Taft, said:

"The reduction of the net operating return provided by the recapture clause is, as near as may be, the same thing as if rates had all been reduced proportionately before collection. It is clearly unsound to say that the net operating profit accruing from a whole rate structure is not relevant evidence in determining whether the sum of the rates is fair. The investment is made on the faith of a profit, the profit accrues from the balance left after deducting expenses from the product of the rates, and the assumption is that the operation is economical and the expenditures are reasonably necessary. If the profit is fair, the sum of the rates is so. If the profit is excessive, the sum of the rates is so. One obvious way to make the sum of the rates reasonable, so far as the carrier is concerned, is to reduce its profit to what is fair."

The Brimstone has not, therefore, and could not have, for the period from and after September 1, 1920, received for itself a greater return than 6 per cent of the value of its railway property held for and used in the service of transportation. Whatever sum it may have earned in excess of 6 per cent on its value has never become its property. As was said by Chief Justice Taft, in the Goose Creek case, supra,

"The statute declares the carrier to be only a trustee for the excess over a fair return received by it. Though in its possession, the excess never becomes its property, and it accepts custody of the product of all the rates with this understanding. It is clear, therefore, that the carrier never has such a title to the excess as to render the recapture of it by the government a taking without due process of law."

The Brimstone having earned a net railway operating income in excess of 6 per cent of the value of its railway property held for and used by it in the service of transportation for the years ended December 31, 1921, and December 31, 1922, respectively, paid one half of such excess to the Interstate Commerce Commission and holds the other half [fol. 112] of such excess in a reserve fund as required by Section 15 (a). The excess income which has been collected by the Interstate Commerce Commission is, when and if no further adjustments are made in the accounts of the carrier for those years, and assuming that the value of the railway property held for and used by it in the service of transportation has been established by the carrier, the property of the United States Government. We do not find any authority in the act under and by which the Commission may return this excess income after it has been collected to the carrier and require the carrier to distribute it among its connections, for by law it is entitled to earn and retain a return of 6 per cent, and by the same law it is required to pay to the Commission for the government one-half of all that it earns over 6 per cent, the other one-half to be held in trust.

Yet, if the Commission should prescribe divisions in this case on the theory that the carrier may not earn from the sum of its divisions net railway operating income in excess of 6 per cent, then there would be nothing for the Interstate Commerce Commission to recapture for the government, but the amounts which have been paid to the Commission would have to be returned to the Brimstone and the Brimstone would, in turn, be compelled to distribute this excess income among its two connecting carriers. We do not believe that such was the intention or meaning of the interstate commerce act.

Section 15 (a) placed a limit upon the return which the carriers may earn out of rates or divisions as a whole. The revenue of the Brimstone railroad is derived almost exclusively from the divisions paid it by its connecting car-
[fol. 113] riers on joint traffic. This is not a case where any shipper, or the connecting lines of the Brimstone, are complaining that any individual rate is unjust, unreasonable or inequitable. The Commission, in Increased Rates, 1920, supra, recommended increases, and in Reduced Rates, 1922, supra, recommended reductions in the divisions received by the Brimstone. Such increases and reductions were made effective both in the joint rates in which the Brimstone participates, as well as in the divisions received by the Brimstone, and thus the Commission established a level for the divisions of the Brimstone, which affected its entire revenues.

There has been no issue raised in this proceeding that the joint rates are unreasonable from the standpoint of any shipper. Therefore, the following language of the Supreme Court applies, viz:

"The excess caused by the discrepancy between the standard of reasonableness for the shipper and that for the carrier, due to the necessity of maintaining uniform rates to be charged the shippers, may properly be appropriated by the government for public uses because the appropriation takes away nothing which equitably belongs either to the shipper or the carrier." Goose Creek case, supra.

In adopting Section 15 (a) of the interstate commerce act, it was clearly the anticipation of Congress that some of the carriers would earn more and some less than 6 per cent of the value of the railway property held for and used by them in the service of transportation, and Congress adopted a plan of recapturing the excess profit of any carrier whose return exceeded 6 per cent.
[fol. 114] The Supreme Court, in the Goose Creek case, supra, further said:

"The control of the excess profit due to the level of the whole body of rates is the heart of the plan."

It may be admitted that there is perhaps some inconsistency between paragraph 6 of Section 15 of the interstate commerce act and paragraph 6 of Section 15 (a) of the act. The former appears to place it within the power of the Commission to make adjustments under certain conditions for the period subsequent to the filing of the complaint or petition or the making of the order of investigation in the divisions received by the several carriers, while in the latter section it is apparent that Congress intended that the Commission should recapture the excess profits on the basis prescribed in the act, and there was a most cogent reason existing for the establishment of this plan. At the close of federal control many of the carriers were on the verge of bankruptcy. Others appeared more profitable, and the question of devising a practical plan for securing a transportation system which could be developed to meet the growing needs of the country was of great importance. The plan devised under Section 15 (a) of appropriating one half of the excess railway operating income in excess of 6 per cent of the value of the railway property held for and used by it in the service of transportation caused the stronger lines, whether short line railroads or trunk line railroads, to contribute to a fund to be used in aiding the weaker lines. It was also contemplated, and past experience proves the wisdom of such foresight, that the carriers would sometimes have good years and bad years, and [fol. 115] therefore, wherever a carrier's net railway operating income amounted to more than 6 per cent the government, after appropriating one half of such excess, required the carrier to place the remaining one half of such excess in a reserve fund not in excess of 5 per cent of the value of its railway property determined in the manner prescribed by the act. This reserve fund may be used by the carrier for the purpose of paying dividends or interest on the securities or rent for leased roads to the extent that the railway operating income for any year is less than 6 per cent. In this matter the strong carriers were required to help the weak carriers and the good years of a carrier's business were required to contribute to the bad years.

Since the Brimstone has paid to the Commission one half of its net railway operating income above 6 per cent

for the years 1921 and 1922, respectively, it should not, for reasons stated, be required at this late date, by a readjustment of the divisions which it has received in the past, be compelled to pay to its connecting lines the sums paid to the Commission, if such sum can be recovered from the Commission, or the government, as the case may be. It cannot do this and comply with paragraph 6, Section 15 (a).

We submit, therefore, for the reasons stated, that the Commission is without jurisdiction to modify or change the divisions which have been received by the Brimstone from its connections, under authority of the Railroad Administration, as affected by Increased Rates, 1920, Ex Parte 74, and Reduced Rates, 1922, respectively, prior to the effective date of the final order to be made in this case.

[fol 1161] Even if the Commission should disagree with our contention as to its jurisdiction in the matter, such a course would be plainly against public policy, and contrary to the purpose for which Section 15 (a) of the interstate commerce act was intended.

Exceptions Nos. III and IV

These exceptions deal with excess net railway operating income of the Brimstone for the years ended December 31, 1923 and 1924, respectively, and for the year, or such portion of the year, ending December 31, 1925, as may show an excess in the net railway operating income subject to recapture by the Commission for the government.

The books of the carrier show a slight excess in net railway operating income over 6 per centum on the value of the carrier's property held for and used in the service of transportation for the year ended December 31, 1923; but by reason of the fact that the value of such property has not finally been determined by the Commission for the years 1923 and 1924, respectively, and by reason of the fact that a final order has not been issued in this proceeding, no payments have, as yet, been made to the Commission.

It cannot, of course, at this time be determined whether the net railway operating revenue of the Brimstone for the year 1925 will be in excess of 6 per cent.

However, the argument which has been made under Exception No. II will apply to the years 1923, 1924 and 1925.

covered by Exceptions Nos. III and IV, and we ask that it [fol. 117] be considered in connection herewith, in case the net railway operating revenues of those years should by chance show an excess over 6 per cent of the value of the railway property of the Brimstone held for and used in the service of transportation.

Conclusion

All of which is respectfully submitted.

James T. Kilbreth, General Attorney. C. R. Liskow, Attorney. Wylie M. Barrow, Special Counsel.

Baton Rouge, La., April 20, 1925.

[fol. 118] Exhibit "F" to bill of Complaint

10879

Interstate Commerce Commission

No. 12969

Divisions Received by Brimstone Railroad & Canal Company

Submitted November 12, 1925. Decided December 14, 1925

Just, reasonable, and equitable divisions to the Brimstone Railroad & Canal Company prescribed on traffic to and from its connections. Former reports, 68 I. C. C. 375 and 88 I. C. C. 62.

James T. Kilbreth, C. R. Liskow, and W. M. Barrow for Brimstone Railroad & Canal Company.

J. R. Bell and Harry McCall for Louisiana Western Railroad Company; and Frank H. Moore and Wm. E. Davis for Kansas City Southern Railway Company.

Report of The Commission on Further Hearing

McMANAMY, Commissioner:

In our original report, 68 I. C. C. 375, we found that the Brimstone Railroad & Canal Company, hereinafter called the Brimstone, was a common carrier of property subject to the interstate commerce act, entitled lawfully to receive just, reasonable, and equitable divisions of rates jointly established by it and its trunk line connections the Louisiana Western, hereinafter termed the Southern Pacific, and the Kansas City Southern, under appropriate tariff provisions, and that

the divisions of joint rates now received by the Brimstone from the two other respondents on interstate traffic are and for the future will be unjust, unreasonable, inequitable, and to the extent that they exceeded or may exceed the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, are excessive, and, in effect, amount to a rebate to the proprietary company.

The record was held open for a period of 90 days to permit respondents to make necessary cost studies for the purpose of arriving at lawful divisions to the Brimstone. Such studies were prepared and further hearing was had. In our second report, 88 I. C. C. 62, we found—

that on and after July 1, 1922, just, reasonable, and equitable divisions to the Brimstone were, are, and for the future will be:

From the Southern Pacific:

On all carload traffic, 87 per cent; on merchandise, less than carloads, 10.5 cents per 100 pounds.

[fol. 119] From the Kansas City Southern Railway Company:

On all carload traffic, 89 per cent; on merchandise, less than carloads, 14 cents per 100 pounds.

We further found that during the period from August 1, 1921 the date on which the investigation was instituted by us, to July 1, 1922, the divisions to the Brimstone should

by reason of the general reduction in rates on the latter date have been relatively greater than subsequent to that period. We also found that the divisions received by the Brimstone should be adjusted on a basis not in excess of the amounts found just, reasonable, and equitable during the periods named.

Subsequently, upon consideration of the record and of the Brimstone's petition for further hearing, the proceeding was reopened to enable us to conduct a cost study, and the effective date of the original orders was postponed until our further order. Elaborate cost studies were made by our experts and statements indicating the results thereof were furnished to respondents in order that they might prepare rebuttal evidence for introduction at the third hearing. Further hearing was subsequently had and the matter has been orally argued.

Plan of Cost Study

A map of the Brimstone and its connections is shown in Oil from Texas Ports to Sulphur Mine, 63 I. C. C. 74, 75. The history of the Union Sulphur Company, hereinafter termed the proprietary company, and the facts concerning the incorporation of the Brimstone and the substantial dividends declared by the latter company, are detailed in the previous reports. The cost studies are intended to develop the average cost, including return on investment, of moving loaded cars to and from the Southern Pacific and the Kansas City Southern. In a manner somewhat similar to that employed by respondents at the former hearings, our experts have, for the purpose of determining costs and fair return as between movements in connection with the Southern Pacific and Kansas City Southern, respectively, divided the facilities of the Brimstone and such facilities of the proprietary company as are considered essential to the common-carrier service of the Brimstone into the following zones: (1) Yard zone, comprising the yard tracks at the sulphur mine plant of the proprietary company used jointly by that company and the Brimstone; (2) Southern Pacific zone, comprising facilities used exclusively in the movement of cars to and from the Southern Pacific; (3) scale zone, comprising facilities used in the weighing of cars to and from both the Southern Pacific and the Kansas

City Southern, and a short portion of the main track connecting the southeast end of the yard zone with the scale [tol. 120] track; (4) Kansas City Southern running zone, used by the Brimstone in all movements between the southeast end of the yard zone and the Kansas City Southern connection, and in certain movements between the northeast end of the yard zone and the Southern Pacific, comprising the main track parallel with the scale track extending from the connection with the southeast end of the yard zone to the connection with the northeast end of the yard zone, and embracing a short portion of this main track also included in the scale zone; and (5) Kansas City Southern zone, comprising tracks used exclusively in the movement of cars to and from the Kansas City Southern.

The cost study is based on the operating expenses, taxes, and joint facility and equipment rents for the calendar year 1923, subject to adjustments on account of alleged errors brought forward from former years and certain deductions because of expenses in performing switching not considered essential to the common-carrier service of the Brimstone, and including an annual return of 5.75 per cent of the value of the property as the amount the Brimstone was entitled to receive for its services as a common carrier in 1923. A seven-day test period, May 21 to May 27, 1924, inclusive, was selected to ascertain the character and extent of the work performed by the Brimstone's locomotives and the average time consumed in handling cars to and from the Southern Pacific and the Kansas City Southern. The average time consumed in handling cars was determined for each zone by dividing the total engine time in carrier service in that zone by the number of loaded cars handled therein. The total average time per loaded car for all cars interchanged with each connection was obtained by multiplying each loaded car involved in the interchange by the average time per car in the zones through which it moved, and dividing the sum of these products by the total number of loaded cars. The total revenues the Brimstone was entitled to receive in 1923 from its operations as a common carrier, based upon the cost of service, including interest on investment, were divided by the total number of loaded cars interchanged with both connections, and the average thus derived used in arriving at the cost of serv-

ice to each connection on the basis of the relative amount of engine time consumed per car in the interchange.

Cost Study

The operating expenses, taxes, and joint facility and equipment rents for 1923, aggregating $219,376.36, constitute the basis of the cost study made by our experts. This amount, adjusted to $166,998.75 in a manner which will later be explained in detail, includes a credit balance [fol. 121] of $21,441.21 on account of equipment rents. After deducting the proportion of the total amount chargeable to intraplant service, there was added a fair return upon investment in the property, less accrued depreciation, that is used in common-carrier service, resulting in a total of $167,877.07. Our experts contend that this latter amount represents the reasonable and necessary cost of operation for 1923.

Rail Replacements

The first amount that is deducted from the total expenses is $4,066.59, which sum relates to a period other than the year 1923. In 1920 the Brimstone relaid a portion of its road with 90-pound rails and charged the entire cost to property investment. In adjusting this error in 1923 the carrier transferred the amount named from investment in road and equipment to operating expenses. The Brimstone agrees that this sum should be deducted from the cost of maintaining roadway and tracks for 1923.

Maintenance of Leased Tracks

A deduction of $6,280.85 has been made from the amount of $13,772.15 shown in the Brimstone's books for maintenance of joint tracks, yards, and other facilities. Under a lease from the proprietary company the Brimstone used 2.76 miles of the former's yard tracks in 1923 at an annual rental of $3,185.98 and assumed the entire cost of maintenance. This agreement also permitted the Brimstone to use certain other tracks of the proprietary company for the purpose of reaching various terminal facilities. The actual work of maintaining the leased tracks was performed by the proprietary company, which charged the

Brimstone an arbitrary amount based on 43.855 per cent of the cost of maintaining all proprietary permanent tracks. A separate record was kept by the proprietary company disclosing in detail the amounts expended for maintenance of these tracks, which totaled $9,474.20 for the last 11 months of 1923. This amount, together with an estimated amount of $750 for January of that year, based on the average expenses for February and December, results in a total of $10,224.20, or an average maintenance cost of $3,704.42 per mile of track. The amount paid by the Brimstone to the proprietary company averaged $4,989.91 per mile.

Our experts testified that the average maintenance cost per mile of $4,989.91, or even $3,704.42, is excessive and not representative of normal yard track maintenance cost to the extent that it exceeded the cost of maintaining other portions of the Brimstone's road, consisting of both main [fol. 122] tracks and yard tracks, substantially similar in all respects affecting their maintenance, including the amount of use. They further contend that the excessive maintenance of these yard tracks is further evidenced by a comparison of the average cost per mile with those of all tracks, including both main and yard tracks, of the trunk lines with which the Brimstone connects, and of other roads in the same general territory. The average costs per mile of maintaining roadway and tracks of the following lines in 1923 are:

Road	Average Cost of all tracks
Kansas City Southern	$1,676 14
Louisiana Western (Southern Pacific lines)	1,817 42
Morgan's Louisiana & Texas Railroad & Steamship Company (Southern Pacific lines)	1,535 52
New Orleans, Texas & Mexico (Gulf Coast Lines)	1,396 94
All Class I roads, western district	1,081 75

Giving consideration to the various tracks maintained by the Brimstone the character of the construction, condition of maintenance, and all factors affecting cost, including the extent of use, our experts who inspected the property estimate that the normal expenditure for maintenance of the joint-yard tracks in 1923, sufficient to include usual and or-

dinary repairs of annual recurrence, and a substantial part of the extraordinary expenditures, should not have exceeded a total of $7,491.30. This amount is based on an average cost of maintaining all tracks of the Brimstone division, the Southern Pacific connection, which was $2,714.24 per mile in 1923. The difference between the amount shown on the books of the Brimstone and the maximum normal expenditure for maintaining tracks of similar character was deducted from the Brimstone's accounts.

The Brimstone's position is that as its records indicate the expenditure of $13,722.15 on the 2.76 miles of track in 1923 that sum should not be seriously questioned. It insists that the normal expenditure for maintaining this switch track was nearly $5,000 per mile as contrasted with the cost of maintenance of roadway and tracks in 1923 on the lines shown in the foregoing table. These latter costs were not employed by our experts strictly to govern the reasonable and necessary cost of maintenance on those tracks used by the Brimstone. An amount was determined that is more than twice the sum expended on the New Orleans, Texas & Mexico, for example, and equivalent to the average cost per mile of maintaining the tracks of the Brimstone division over which all traffic to and from the Southern Pacific moves, and over part of which tracks all traffic to and from the Kansas City Southern passes.

[fol 123] The Brimstone contends that the high maintenance cost of these tracks is caused by the deleterious effect of the sulphur on the track material, and if presented exhibits purporting to show somewhat higher maintenance costs on certain portions of the Southern Pacific over which sulphur moves than on other portions where that commodity is not handled. These exhibits are based to a large extent upon estimates, and are not convincing in the absence of a showing as to other conditions which may have affected maintenance costs. Our experts show that considering the Brimstone road as a whole, exclusive of the joint yard tracks in question, out of a total of 26,332 crossties in track 13.17 per cent, or 3,468, were replaced in 1923, equivalent to an indicated average tie life of 7.59 years. Based upon average annual tie renewals for the five years ended December 31, 1923, amounting to 6.21 per cent of the total ties in track, the indicated average life of ties on

the Brimstone was 16.1 years. Rail renewals on the Brimstone in 1923 amounted to 11.68 tons, or only 1.36 per cent of the total in track. The average amount of rail renewals for five years ended December 31, 1923, was 20.62 tons, or 2.40 per cent of the total in track, this average annual rate of renewal being equivalent to an indicated rail life of 41.67 years. The exhibit introduced by our experts shows that a very large proportion of the rail on the Brimstone's main track is 60 pound re lay rail rolled in 1886 and is now 39 years old, while small amounts of 60 pound rail rolled in 1890 and 50 pound rail rolled in 1881 are 35 and 44 years old, respectively. These facts indicate that the Brimstone has been getting all of the service life out of its rails and ties that could reasonably be expected notwithstanding its contentions that the high maintenance costs were attributable to the injurious effect of the sulphur on track materials, requiring unusual replacements.

It appears that of the total maintenance costs shown by the Brimstone's records $3,547.36 was no part of the maintenance charge but was in the nature of a profit paid to the proprietary company. It is not improbable that the maximum amount allowed by our experts is in excess of what was necessary for economical maintenance of the tracks in question, and certainly it appears that such sum should not have been exceeded as reasonable and necessary costs for 1923.

Locomotive Repairs, Depreciation, and Retirements

An amount of $5,000 was deducted from expenses for locomotive repairs. It is asserted by our experts that the Brimstone erroneously charged the cost of rehabilitating two locomotives to operating expenses instead of to the appropriate investment account. The locomotives were [fol. 124] purchased in poor condition from the proprietary company. The purchase price of one was $6,000 and of the other $3,500. The aggregate amount charged to repairs on them, as indicated by the figures of the Brimstone, was $5,140.92, substantially all of which represented extensive or general repairs. Additional locomotive repairs on account of miscellaneous items of material not allocated to any particular locomotive are shown as $758.35, and it is as-

sumed that part of this sum was also incurred on account of these repairs. Because of the character of the records our experts were unable to identify the exact amount which should be charged to investment instead of to locomotive repairs, but they estimate that the sum is at least $5,000.

As a substantial offset to the deduction from locomotive repairs, the item of locomotive depreciation and retirements has been increased $3,427.35. Because of the failure of the Brimstone properly to account for the retirement of certain old locomotives in 1923 the operating expenses were understated to the extent indicated. No objection is raised to these accounting adjustments.

Car Repairs

An amount of $3,450 was deducted by our experts from car expenses for repairs. They contend that the policy of the Brimstone was to install steel wheels in place of cast-iron wheels, and to charge the entire cost, including labor and material, to car repairs, with no credit allowance for the salvage value of usable or scrap wheels removed. In 1923 the Brimstone purchased 200 new steel car wheels, at a total cost of $7,979.37, including freight charges, or $39.89 for each wheel. The cost of cast-iron wheels approximated $27.40 each. During the year 1923 there were only 138 cast-iron wheels replaced by steel wheels. The difference in cost was $1,723.62, and the salvage value of the cast-iron wheels, $12.51 per wheel, would be $1,726.38, or a total of $3,450, the amount deducted from repairs. The investment account was increased $1,723.62.

A witness for the Brimstone testified, among other things, that the replacements were made only when the cast-iron wheels became in bad order. The testimony of the witness does not support the deduction of the amount named from operating expenses and assigned to investment. The Brimstone concedes, however, that no allowance was made for salvage value of the cast-iron wheels removed in 1923. It states that operating expenses should accordingly be credited with $6.66. It appears that this should be allowed. The difference between the net amount deducted from operating expenses and charged to investment as set forth, by our experts and the amount advocated by the Brimstone as chargeable to operating expenses is $3,014.

[fol. 125] The amount of $3,105.24 was also deducted from car repairs and charged to material and supplies. Contrary to our accounting regulations, the Brimstone made a practice of charging directly to operation the cost of certain material and supplies regardless of whether they were on hand or put into service. No record was kept by the Brimstone of the amount and value of material remaining on hand December 31, 1923, which had previously been charged to car repairs but not consumed in such repairs prior to that date. The value of the 62 steel car wheels, the difference between 200 purchased and 138 applied, previously mentioned, at $39.89 each would amount to $2,473.18. It was possible for our experts closely to approximate the amount and value of the material and supplies improperly charged to operating expenses from the record of material purchased and consumed. The Brimstone's own estimate of the value of such material is $3,105.24, and that amount was accepted by our experts as the figure that should also be deducted from car repairs and charged to material and supplies.

Car Depreciation and Retirements

Our experts deducted $7,547.45 from car depreciation and retirements for 1923. In 1919 and 1920 the Brimstone rebuilt a large number of its gondola cars. Originally the entire cost of this work, including freight charges and minor repairs, was charged to investment in freight-train cars. In January, 1923, the Brimstone adjusted its accounts by crediting investment and charging operating expenses under car depreciation and retirements in the amount named. The Brimstone admits that this amount constituted no part of operating expenses for 1923, and the sum has been deducted.

The net deduction from maintenance of equipment accounts as advocated by our experts is $13,645.36.

Traffic and General Expenses

The traffic expense has been reduced $13,277.86 and the general expenses $3,999.07. In our second report we said:

Surely, the Brimstone has little occasion to solicit traffic for it is the only line that serves the proprietary company

whose business constitutes almost the whole of the traffic moved by the Brimstone.

The accounts of the Brimstone show a total traffic expense of $16,704.56 and general expenses of $24,559.86 in 1923. Our experts urge that these items of expense were excessive, especially in view of the fact that the vice president and secretary of the Brimstone served without compensation. They state that the traffic expenses of a small [fol. 126] industrial line operating no passenger service and deriving nearly 99 per cent of its traffic from the proprietary company should be relatively small in comparison with other expenses, but that on the contrary these expenses for the Brimstone were particularly heavy as compared with those of other selected short lines. Comparisons will presently be illustrated in a table.

The maintenance of general offices both in New York and at Sulphur Mine necessitates the keeping of two sets of records in respect of most of the accounts, and results in duplication of work. Several of the general officers and other employees at both places, who are in the joint employ of both companies, devote a small proportion of their time to the Brimstone but receive liberal compensation. It is contended that these conditions result in excessive charges to traffic and general expenses which are not considered to be representative of efficient or economical operation. As illustrative of the excessive nature of the traffic and general expenses of the Brimstone for 1923, the expenses of certain other short-line roads are exhibited, the comparable roads having been carefully selected from a list of about 300 somewhat similar lines with regard for the mileage operated, equipment owned, extent of freight traffic, and other factors. The relationship of the traffic and general expenses to all other expenses of these short-line roads are contrasted with the Brimstone's expenses, as follows:

Name of Carrier	Traffic expenses	General expenses	Traffic and general expenses
Roads having no officers serving without compensation:			
	Per cent	Per cent	Per cent
Montana, Wyoming & Southern R. R. Co.	0 39	17 38	17 66
Campbell's Creek R. R. Co.	93	9 15	10 08
Kentucky & Tennessee Ry.	3 54	16 39	19 93
Sewell Valley R. R. Co.	91	5 66	6 57
St. Louis & O'Fallon Ry. Co.[2]	1 89	22 63	24 52
Lake Champlain & Moriah R. R. Co.		6 07	6 07
Ligonier Valley R. R. Co.	1 38	11 50	12 88
Genesee & Wyoming R. R. Co.[3]	3 04	21 05	24 09
Clarendon & Pittsford R. R. Co.	32	2 46	2 78
Chestnut Ridge Ry. Co.	6 00	7 36	13 36
Cornwall R. R. Co.	46	4 96	5 42
Average	1 706	11 326	13 032
Roads having two general officers serving without compensation:			
Gulf & Sabine River R. R. Co.	1 47	7 25	8 72
Deering Southwestern Ry.	4 72	5 88	10 60
Kanawha, Glen Jean & Eastern R. R. Co.	66	11 44	12 10
Cumberland & Manchester R. R. Co.	1 05	9 60	10 65
Oneida & Western R. R.	82	15 68	16 50
Average	1 74	9 97	11 71
Brimstone Railroad & Canal Co.	9 75	14 33	24 08

[1] Traffic and general expenses increased 36.7 per cent in 1923 over 1922. This may have been due to an extension of road made in 1922.

[2] Traffic and general expenses increased 10.9 per cent in 1923 over 1922. Cause is unknown.

[3] This is a very prosperous road paying high salaries for a short line. Six executives and general officers received aggregate compensation of $43,000.

[fol. 127] On the basis of the foregoing comparisons our experts calculate that the reasonable and necessary traffic and general expenses of the Brimstone in 1923 should not have exceeded 2 per cent and 12 per cent, respectively, of all other operating expenses. The application of these percentages to the total operating expenses as shown by the Brimstone would result in traffic expenses of $3,426.70 and general expenses of $20,560.19.

The Brimstone insists that regardless of the care exercised in selecting certain short line railroads for purpose of comparison such exhibits are of little value because evidence is lacking as to similarity of transportation or other conditions. Its witness testified that traffic expenses, for example, can not be governed by the expense of maintenance of way and structures or maintenance of equipment. He asserted that transportation expenses vary according to conditions and localities, whereas traffic expenses are governed very largely by the nature of the commodity handled and the territories to which it moves. Several of the roads cited in comparison transport principally coal or zinc ore. It was testified that such commodities do not move to as many destinations as sulphur, and consequently that the publication of a multiplicity of rates is not required as in the case of sulphur. The importance and necessity of employing a competent traffic official and office assistants to publish or supervise in a proper manner the publication of rates over the various routes to widely separated parts of the United States, and the maintenance of such an official in New York to be in close contact with the rate departments of many of the larger carriers, are emphasized.

Despite the testimony of the Brimstone's witness that maintenance of equipment is higher in mountainous districts than in level country, it is observed that maintenance of equipment represents the greatest operating expenses on the Brimstone and theoretically should tend to reduce the percentage that the traffic and general expenses bear to other operating expenses under the comparisons advocated by our experts. Furthermore, maintenance of way and structures on the Brimstone is not abnormally low in comparison with other roads cited. The Brimstone argues that the relationship between traffic and general expenses

and other operating expenses on the small line cited "can hardly be taken as a precedent in establishing a general principle." The comparisons made by our experts were merely to test whether or not the Brimstone was operated efficiently and economically in 1923. The traffic and general expenses shown by the Brimstone's books were actually paid by that line in 1923, but some test in addition to showing actual payment must be made. The expenses of any particular short line should not govern as to the maximum expenses on the Brimstone unless some definite [fol. 128] showing as to similarity of conditions is in evidence, but where a number of comparable short lines have been selected with the particular care indicated such comparisons are of probative value.

It is not improbable that some of the expenses shown by the Brimstone were incurred to some extent primarily on behalf of the proprietary company. We are of the opinion that maximum traffic and general expenses under efficient and economical management should not have exceeded the amounts indicated by our experts. These amounts somewhat exceed those determined by the use of the average percentage relationships of traffic and general expenses to other operating expenses of the short lines cited in comparison.

Adjustment of Operating Expenses

The deductions from operating expenses proposed by our experts are as follows: $10,347.44 from maintenance of way and structures, $18,787.58 from maintenance of equipment, $13,277.86 from traffic expense, and $3,999.67 from general expenses, or a total deduction of $46,412.55. This results in an allowance of $171,329.01 for total operating expenses for 1923, exclusive of tax accruals, and joint facility and equipment rents.

Taxes

Tax accruals were reported by the Brimstone as $24,928.89, which includes nonoperating as well as operating taxes. Excluding Federal income tax and other nonoperating taxes, there remains a total operating tax of $13,821.61.

Joint-Facility and Equipment Rents

Joint-facility rents of $3,289.34, locomotive rent of $594.13, and the credit balance of $22,035.34 on account of hire of freight cars or per diem are unchallenged by our experts.

The total deductions advocated by our experts would result in a total operating expense for 1923 of $166,998.75, as previously mentioned.

Material, Supplies, and Cash

The Brimstone contends that the estimated amount to cover working capital, material, and supplies should be $28,913. Its records show that the value of material and supplies on hand December 31, 1923, was $8,908.81, which amount our experts increased by accounting adjustments previously explained to $12,014.05. Cash on hand of $5,076.30 brought the total to $17,090.35. In Appendix 3 to our report in Blue Ridge Ry. Co., 97 I. C. C. 744, working [66 I. 129] capital was described as follows:

Working capital is understood to include, usually, three parts: First, the investment in a stock of material and supplies; second, the cash necessary to pay the operating expenses incurred for common-carrier service prior to the time when the revenues from that service are available; and, third, a buffer fund of cash constantly on hand to cover amply the recurrent and fluctuating deficiencies in the inflow of revenue applicable to payments falling due.

In that case we found that the cash to meet payments for all purposes connected with common-carrier operations was collected so well in advance that it provided more than enough funds to cover any irregularities in the amount of payments falling due. Accordingly we found that no fund of invested cash was used for common-carrier operations, and that the stock of material and supplies held and used for common-carrier operating purposes should be 11.2 per cent of the operating expenses. The Brimstone and the proprietary company being virtually a single enterprise, the revenue collectible from the proprietary company at Sulphur Mine makes the situation substantially similar to that considered in the case cited, but our experts have in-

cluded in the value of the property $5,076.30 as cash on hand. If this sum were deducted, there would remain but $12,014.05 to represent material and supplies. An amount equal to 11.2 per cent of operating expenses of the Brimstone would result in more than the sum of the working capital and material and supplies on hand at the close of the year 1923. The percentage last named was, as stated, used in the instance of the Blue Ridge Railway. That road operates more than 50 miles of track, and apparently a far greater amount of materials and supplies was justified than on the Brimstone. The estimated amount of working capital advocated by the Brimstone as well as by our experts must be rejected. The Brimstone's estimate of necessary material and supplies must likewise be rejected, but the amount on hand as shown by its figures will be allowed.

Apportionment of Expenses to Individual Cars

Our experts have accepted the Brimstone's book figures or estimates as to actual investment, material and supplies, and cash on hand in 1923 and augmented them $5,000 on account of rehabilitation of two secondhand locomotives, $1,723.62 on account of excess of 138 steel car wheels applied over estimated current cost of cast iron wheels, and $3,105.24 on account of car material on hand erroneously charged to car repairs instead of to material and supplies, resulting in a total of $551,640.72. From this amount they deduct accrued depreciation of $13,928.13 on road and $154,133.84 on equipment as shown by the books of the [fol. 130] Brimstone, leaving an investment of $383,578.75 in road and equipment, including material and supplies and cash. They compute interest at 5.75 per cent as a fair return on the investment last named, resulting in $22,055.78, which, added to the operating expenses, amounts to $189,-054.53. This amount includes expenses of intraplant switching for the proprietary company, which our experts contend amounted to $21,177.46, leaving a balance of $167,-877.07 as chargeable to common carrier service.

A total of 24,620 loaded cars was interchanged with the Brimstone's two connections in 1923. This figure includes less-than-carload freight at an assumed average weight of 5 tons per car. The average cost per car of all loaded

cars interchanged during 1923, including interest on investment at the rate of 5.75 per cent, was $6.8187. During the test period the average time per car consumed on 368 loaded cars handled in zones 1, 2, 3, and 4, and interchanged with the Southern Pacific, was 5.80686 minutes, and on 159 loaded cars handled in zones 1, 3, 4, and 5, and interchanged with the Kansas City Southern, 7.25833 minutes. The average time per loaded car to and from both connections was 6.24478 minutes. Under the existing division of traffic as between the two connections the figures show that the average engine time consumed per loaded car in the interchange with the Kansas City Southern was 24.986 per cent greater than that consumed in the interchange with the Southern Pacific. Exhibits prepared by our experts show the average cost per loaded car for all cars interchanged with both connections, including interest, to be $6.8187. On the basis of this figure the average cost per loaded car interchanged with the Southern Pacific would be $6.3405, and with the Kansas City Southern, $7.9254.

It is the contention of our experts that the foregoing figures are considerably in excess of reasonable and necessary expenses for the economic conduct of the common carrier service in 1923. One reason for this is the appreciable augmentation of operating costs during the year 1923. For example, the operating expenses for that year contain an item of $16,693 for 8,551 barrels of fuel oil. In 1921 the Brimstone consumed only 4,430 barrels at a cost of $4,509.39, while in 1922 it used 4,986 barrels at a cost of $6,443.80. The Brimstone explains that the consumption of substantially twice the amount of fuel oil in 1923 as in 1922 was caused by the additional intraplant service it performed in 1923. From this explanation it would appear that about half of the service performed was intraplant instead of the small portion assigned by our experts, and that the cost of handling the cars to and from the two connections should be materially reduced from that shown by them. The number of loaded cars handled in 1922 was approximately 20,178, or about 20 per cent less than in 1923, [fol. 131] and naturally this difference accounts for the slightly greater consumption of oil in 1923; but the average engine time consumed per loaded car was only 7.4130 minutes in 1922, as compared with 16.5404 in 1923.

Prior to the application of the so-called recapture clause of the act the Brimstone realized large earnings and declared substantial dividends. Later substantial investments were made in freight cars aggregating $352,532.12, as shown by the records for 1923. These cars were purchased virtually for the sole use of the proprietary company and traveled only 1.42 per cent of their total mileage on the Brimstone. Interest on the investment in them at 5.75 per cent, taxes, repairs, and depreciation amounted to $91,200.39 in 1923, against which may be credited only $27,409.67 for their use on foreign lines, representing an expense of $5.46 on each gondola car loaded with sulphur in 1923.

Apportionment of Maintenance of Way Expenses

A witness for the Brimstone directed attention to the fact that our experts, in allocating expenses for maintenance of way and structures, and maintaining joint tracks, yards, and other facilities between common carrier and intraplant services, used as a basis the tractive power hours of one of the Brimstone's locomotives while it was engaged in yard zone No. 1 on certain tracks not maintained by the Brimstone during the test period. The expense mentioned is chargeable only to certain tracks maintained by the Brimstone in zone No. 1, and the time consumed by the engine within the sulphur bins on tracks maintained by the proprietary company should have been excluded in the calculations. Our experts point out that in the apportionment of engine time great liberality has been shown the Brimstone in many respects; that some of the time consumed by the locomotive in the scale zone should have been charged to plant service instead of carrier service, inasmuch as certain of the cars were held in that zone while adjustment was made of the loads of sulphur, and that a charge should have been made against plant service for the use of gondola cars in handling sulphur from the storage bin to the conveyor pit for loading box cars and for the maintenance and rental of certain tracks maintained by the Brimstone but used for plant service. It was explained that there was no satisfactory means of definitely determining the time consumed in the operations mentioned, but it was stated that such time would be very substantial in the

aggregate. Independent of these explanations the maintenance cost borne by the Brimstone appears excessive by any of the standards presented.

{fol. 132} Cost of Reproduction New

The Brimestone's estimate of the cost of reproduction new as of December 31, 1923, is $590,733. This exceeds the investment shown on the books of the Brimstone, exclusive of material, supplies, and cash, by $36,182.63. The increased amount is obtained by estimates of increased values since 1918 as determined by a valuation engineer who testified for the Brimstone. These estimates of increased costs were calculated by the use of various guides. Engineering costs were increased to 194 per cent of those in 1918, representing the increase on the Kansas City Southern from 1918 to 1923. The percentage of increase adopted as to grading costs was based upon the witness's general knowledge of such costs in southern territory. He stated, however, that about 42 per cent increase was shown in that territory from 1918 to 1923 but that he selected 50 per cent increase as a normal basis to be applied to the Brimstone. No increase was made in the relatively small item of land values. Interest at the rate of 8 per cent was used as an estimate for the period during construction. The largest items are steam locomotives and freight cars, which have been increased 224 and 203 per cent, respectively.

The estimated cost of reproduction new by the Brimstone's witness was based upon estimated values of 1914 and 1918 and to these were added estimated percentages of increase since that time. The figures as of any of the dates indicated were not taken from the records of the Brimstone. The witness relied to a considerable extent upon his own judgment as to the proper percentage of increase to apply. He recognized the fact that another valuation engineer, possessing the same qualifications and experience for such a task, might naturally arrive at different total figures, but stated that should the estimates of such engineer vary more than 10 per cent from his own they would be erroneous.

It is significant that the cost of reproduction new, as exhibited by the Brimstone's witness, does not differ more

than 10 per cent from the actual investment as shown by our experts. This may be attributable to some extent to the fact that $396,694 of the so-called cost of reproduction new represents equipment, and only $173,650 is assigned to road. Practically all of the equipment was renewed at the present higher basis of cost, so that there would be no material difference between the actual cost and the estimated cost of reproduction new if the latter were based upon a representative percentage. The total investment in equipment as exhibited by our experts is considerably higher than that estimated by the Brimstone, being $408,-238.19, as taken from the books of the Brimstone. The in- [fol. 131] vestment in road, shown by the books of the Brimstone, is $126,112.18, which amount is not challenged by our experts.

The Brimstone urges that it is eminently unfair to use the investment cost as a basis for value upon which to compute a fair return. Standard Oil Company of New Jersey v. Southern Pacific Co., decided April 20, 1925, 268 U. S. 146, is cited, wherein the court stated:

> It is to be borne in mind that value is the thing to be found and that neither cost of reproduction new, nor that less depreciation, is the measure or sole guide. The ascertainment of value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts. Minnesota Rate Cases, 230 U. S. 352, 434.

Independent of the question of depreciation, the difference between the figures submitted by our experts and those advocated by the Brimstone is $56,182.63. Interest on that amount at 5.75 per cent would be the equivalent of about 13 cents per car for the year 1923. Application of a reasonable amount of depreciation would greatly reduce the difference per car. Furthermore, our experts show $11,744.37 more than the Brimstone's estimate of investment in equipment, and an amount of $3,076.30 is allowed by them for cash which should be deducted. In the summary full consideration will be given to the figures submitted by the parties dealing with the cost of reproduction new and proper allowance made in the conclusions applied to individual cars.

Depreciation

The Brimstone contends that 22 per cent of its estimated cost of reproduction new, or $129,961, should be assigned to depreciation as of December 31, 1923. Accrued depreciation as shown by the books of the Brimstone as of that date amount to $13,928.13 on road and $154,133.84 on equipment, totaling $168,061.97, which amounts were employed by our experts in their cost study. In our former report, 88 I. C. C. 62, it is shown that the Brimstone's calculations were based upon depreciation of 34 per cent instead of 22 per cent. A witness for the Brimstone explained that the roadway was in better condition in 1923 than at the time the earlier figures were submitted. A substantial portion of the depreciation, however, is in connection with equipment rather than with roadway. The exhibit containing the estimated depreciation of 22 per cent was not introduced by a representative of the Brimstone but by an officer of the Kansas City Southern. The accrued depreciation indicated by the Brimstone's books exceeds that estimated by the witness last mentioned but is less than shown in our [fol. 134] former report referred to. The accrued depreciation shown on the books of the Brimstone is presumed to represent the proper amount in the absence of better evidence. Substitution of a different amount is not warranted on this record.

Going-concern Value

The Brimstone contends that 7.5 per cent of the cost of reproduction new should be added for going-concern value. The percentage named is merely an estimate and no method of ascertainment is shown. Whether this percentage represents the cost of development, including advertising, solicitation of business, deficits sustained from operations during lean years, or many of the other elements that have been recognized or rejected by us and the courts is not disclosed. The Brimstone has no going-concern value in the sense that ordinary business enterprises have such value. As shown in the original report the Brimstone is owned by the proprietary company and 38.54 acres of its right of way were purchased from the proprietary company. In our original report, at page 382, we stated:

On January 22, 1914, the stockholders authorized an increase of capital stock to $200,000, 2,000 shares, par value $100 each, 1,995 of which are owned by the proprietary company, the remainder by directors, three of whom are officials of both the Brimstone and the proprietary company.

Certainly the Brimstone at the outset did not need to solicit business, for as soon as the few switch tracks were completed the proprietary company's business was tendered and doubtless no other line would have been permitted to buy or build tracks on the lands of the proprietary company. The 100 per cent dividend in 1914 and the enormous dividends thereafter indicate that there was little loss on the part of the Brimstone. The going-concern value of the Brimstone will be instantly extinguished as soon as the proprietary company discontinues business. Such going-concern value as may represent an asset has been included, we believe, in the figures dealing with the cost of reproduction new less depreciation.

Amortization

The Brimstone seeks to set up an annual sum of $4,981.58 representing amortization of the investment in road over a period of 21 years. They show an investment of $126,647.27, and depreciation of $14,415.49 as of December 31, 1924, leaving a net investment of $112,232.18 on that date. The difference between the net investment and the estimated salvage value of $7,619.34 on December 31, 1924, is [fol. 135] $104,612.84. The latter amount spread over the period of 21 years results in the so-called annual amortization urged by the Brimstone. Had the Brimstone set aside such annual sum for 21 years the accrued amount at compound interest would exceed the amount alleged to be necessary to amortize the road. No annual sum has been set aside to amortize the property but instead dividends totaling $580,000 were paid to the stockholders during the period from June 30, 1906, to December 31, 1923. In explanation of the unusual dividends paid, the Brimstone attempts to show that the total amount paid represents a sum slightly less than 10 per cent each year on the actual investment in the property. No depreciation is considered and the figure representing the investment appears to be far in

excess of the value of the property. The view is warranted that, instead of setting up an amortization fund, the Brimstone has virtually accomplished the same result through its dividend payments referred to.

Common carrier and Intraplant Service

Witnesses for the Brimstone introduced exhibits on this point designed to rebut the testimony and exhibits of our experts. They contend that during the test period the average time consumed in zones 1, 2, 3, and 4 per loaded car interchanged with the Southern Pacific was 7.97604 minutes, instead of 5.80186 minutes, while the time consumed in zones 1, 3, 4, and 5 per loaded car interchanged with the Kansas City Southern was 9.44428 minutes instead of 7.25833 minutes, resulting in an average of 8.41935 minutes instead of 6.24478 as shown by the exhibits of our experts. The result obtained by the Brimstone is based to a great extent upon the theory that the placing of empty cars on the plant hold tracks is not in fact a spotting of the cars, and that therefore the movement from such tracks to the actual place of loading in the plant is a common carrier service and not a plant service as determined by our experts.

A difficult question is here presented with respect to the technical line of demarcation between plant and common carrier service. The holding of cars at a place in the plant where loading is impossible is not spotting the cars for loading, but if the plant requires the empties to be placed in this manner for its convenience the additional move is a plant service. With respect to the particular switching we said in our second report at page 68:

> The Brimstone admits that the necessity for using these storage tracks "for spotting empty cars in more than one direct movement, is because the facilities for loading in the sulphur bins are inadequate." If these facilities were adequate the Brimstone locomotive could spot the cars in one [fol. 136] movement on tracks of the proprietary company, and remove the loaded cars in the same manner. No storage tracks would be required, and the necessity for service by the proprietary company's locomotive would be largely eliminated.

The service from the hold tracks in the plant to the loading bins was performed by the Brimstone in 1923, instead of by the proprietary company, as in former years.

From 35 to 40 or more cars were loaded each day, and these generally made a round trip to Sabine, Tex., within 24 hours. The 156 cars owned by the Brimstone were either on the plant hold tracks awaiting opportunity to be placed for loading, being loaded, or en route, except a few cars undergoing repairs. It was stated that cars were not pulled from the loading tracks in greater numbers because of the inability of the engine to pull larger trains. It is observed from the exhibits that this engine hauled as many as 17 or 18 loaded cars on certain occasions during the test period but in many instances moved as few as two, four, and six loads from the proprietary company's loading tracks, evidently to make room for empties from the plant hold tracks. A witness testified that the whole daily supply of 35 to 40 cars could be placed at one time on the proprietary company's loading tracks. It was conceded that the reason the maximum number of empty cars was not placed for loading at the sulphur bins in a single switching movement was to meet the convenience of the proprietary company.

It is clear from the evidence that the so-called hold track is maintained primarily for the convenience of the proprietary company and that the movement to and from that track is likewise for its convenience. We are mindful of the fact that certain cars held in reserve by the Brimstone may have been placed on the plant hold track in greater quantities than the daily supply for loading, and in such instances the movement from the plant hold track to the place of loading may be considered as a carrier service. Consideration will be given to this possible variation in the final cost figures. The total operating expenses assigned to intraplant switching by our experts is only $21,177.46. If this entire amount were assigned to common carrier expense, the resulting increase would be less than $1 per car on the 24,636 loaded cars handled in 1923.

Jurisdiction to Require Adjustment of divisions on Past Shipments

The Brimstone contends that we are without jurisdiction and authority to prescribe divisions of joint rates, except

for future application. This view is based on the theory that the joint rates in question were not established pur- [fol. 137] suant to an order from us. All of the joint rates here considered were established pursuant to our findings under Increased Rates, 1920, 58 I. C. C. 220. We have found in prior cases that rates so established come within the plain language of paragraph (6) of section 15, which gives us power to require a readjustment of divisions for the period subsequent to the date the investigation was instituted where the joint rates were established pursuant to a finding or order by us. New York Dock Ry. v. B. & O. R. R. Co., 89 I. C. C. 695, and Marion & Eastern R. R. Co. v. C. & E. I. R. R. Co., 96 I. C. C. 402.

The Brimstone further contends that as one-half of its excess income for the years 1921 and 1922 has been recaptured under section 15a the earnings on the value of the railway property held for and used in the service of transportation for those years have been "established by law"; and that the excess earnings for 1923 are being held in abeyance to be recovered by and paid to the proper authority whenever the net railway operating income, based upon the value of the property for the year ended December 31, 1923, has been finally determined.

These contentions are not well founded. The payments for 1921 and 1922 were the result of tentative computations based upon the carrier's figures and not upon a finding by us. No recapture hearing has been had with respect to these sums. Since the further hearing in this proceeding, the Brimstone has made a payment on account of excess earnings for 1923, but this, too, was based upon preliminary or tentative computations. We have ample jurisdiction and authority to determine the divisions that should be paid since the date of the institution of the investigation. A careful review of the record indicates that such divisions should be the same throughout the period of investigation except that proper allowance should be made for the 10 per cent reduction of July 1, 1922.

Southern Pacific and Kansas City Southern Controversies as to Divisions

As stated in our second report, the Southern Pacific contends that whatever divisions are reasonably necessary to

enable the Brimstone to defray its operating costs and earn a fair return should be established alike on traffic to and from both connections, notwithstanding the difference in costs reflected by the study. It is urged that if the amount of divisions received from one trunk line be greater than those received from the other there would be an incentive to the Brimstone to deliver its traffic to the trunk line paying the higher divisions. A change in the proportion of cars (fol. 138) delivered to the respective connections, it is insisted, would affect the relative cost per car of making such deliveries and result in improper divisions from the two connections.

The Kansas City Southern argues that the Brimstone divisions should be based on the results of the cost study, which would make the divisions from the Kansas City Southern higher than those from the Southern Pacific. It insists that the spread between the divisions to be paid by it and by the Southern Pacific should not be less than $3 per car, and that despite the cost studies made by our experts those divisions should not be less than $12 per car from it and $9 per car from the Southern Pacific. In our second report we virtually found that such amounts would be so excessive as to constitute a rebate to the proprietary company. We adhere to the principle announced in that report, namely, that the divisions, so far as practicable, should be based upon the cost of the service in each case, plus fair return.

No substantial evidence was introduced to justify a modification of our former findings with respect to the divisions on less than carload traffic. Based on an assumed average of 5 tons per car as used by our experts, the division on less than carload traffic as determined in our former report would result in $10.50 per car from the Southern Pacific and $14 per car from the Kansas City Southern on and after July 1, 1922. Prior to that date the divisions would be higher, due consideration being given to the 10 per cent reduction in all rates on July 1, 1922.

Conclusions

The divisions accruing to the Brimstone are shown in our former reports and it is deemed unnecessary to repeat them herein. Our former findings in this proceeding are modified to the extent indicated below:

Based upon the cost of the service and a fair return upon the value of the property held for and used in the service of transportation for the public generally, we find that during the period from August 1, 1921, to but not including July 1, 1922, just, reasonable, and equitable divisions to the Brimstone would have been:

From the Southern Pacific:

On all carload traffic, $7.22 per car; on merchandise, less than carloads, 11.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $8.89 per car; on merchandise, less than carloads, 15.5 cents per 100 pounds.

[fol. 139] We further find that on and after July 1, 1922, just, reasonable, and equitable divisions to the Brimstone were, are, and for the future will be:

From the Southern Pacific:

On all carload traffic, $6.50 per car; on merchandise, less than carloads, 10.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $8 per car; on merchandise, less than carloads, 14 cents per 100 pounds.

We further find that the divisions received by the Brimstone should be adjusted on a basis not in excess of the charges above found just, reasonable, and equitable during the periods named.

Nothing herein contained shall be construed as an indication of the value of the property which we may determine under section 19(a) of the act.

An appropriate order will be entered.

[fol. 140] Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of December, A. D. 1925

No. 12969

Divisions Received by Brimstone Railroad & Canal Company

It appearing, That on April 4, 1922, and March 10, 1924, the commission entered its report, and its report and order on further hearing, respectively, in the above entitled proceeding, and that on May 5, 1924, it postponed the effective date of said order until the further order of the commission, and reopened the proceeding for the purpose of enabling the commission to conduct a cost study and for such further hearing as the commission might direct;

It further appearing, That such further hearing has been had, and the commission having, on the date hereof, entered its report on said further hearing containing its findings of fact and conclusions thereon, which said report, and the reports of April 4, 1922, and March 10, 1924, except as modified herein, are hereby referred to and made a part hereof:

It is ordered, That said order of March 10, 1924, be, and it is hereby, vacated and set aside.

It is further ordered, That for the period from August 1, 1921, to but not including July 1, 1922, the divisions of interstate joint rates received by the Brimstone Railroad & Canal Company, hereinafter termed the Brimstone, on freight traffic interchanged with the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, hereinafter termed the connecting lines, shall be adjusted so as not to exceed the following amounts:

From the Louisiana Western Railroad Company:

One all carload traffic, $7.22 per car; on merchandise, less than carloads, 11.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $8.80 per car; on merchandise, less than carloads, 15.5 cents per 100 pounds.

It is further ordered, That on and after July 1, 1922, the divisions of interstate joint rates received by the Brimstone [fol. 140a] on freight traffic interchanged with connecting lines shall be adjusted so as not to exceed the following amounts:

From the Louisiana Western Railroad Company:

On all carload traffic, $6.50 per car; on merchandise, less than carloads, 10.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $8 per car; on merchandise, less than carloads, 14 cents per 100 pounds.

And it is further ordered, That this order shall take effect as of August 1, 1921, and shall continue in force until the further order of the commission.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fols. 141–144] In United States District Court

[Title omitted]

First Amended Bill of Complaint

Comes now Complainant and with leave of the Court first had and obtained moves to amend its original Bill of Complaint by adding to Paragraph XVI thereof sub-paragraph (d) as follows to-wit:

"(d) That the said findings and orders of the Interstate Commerce Commission were made and issued without the introduction or consideration of any evidence to show the reasonableness or unreasonableness, or justness or unjustness of the divisions of joint rates as between the carriers parties thereto; and that the said findings and orders were

made and issued without the introduction or consideration of any evidence to show the reasonableness or justness or unreasonableness or unjustness of the divisions of any particular joint rate, nor was any evidence introduced or considered showing the amount of service performed by the Brimstone and its several connections under all or any individual joint rate, all as is required by the Interstate Commerce Act."

Wherefore, Complainant prays that in the furtherance of justice and upon such terms as may be proper, the foregoing amendment to its Bill of Complaint be permitted and allowed upon the condition that Complainant shall at its own expense furnish to the Defendants a copy of the Bill so amended; and upon hearing, for a decree as prayed for in the original Bill.

And for such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

James T. Kilbreth, W. M. Barrow, Cullen R. Liskow,
Solicitors for Complainant.

Duly sworn to by Cullen R. Liskow. Jurat omitted in printing.

[fol. 145] In United States District Court

[Title omitted]

Second Amended Bill of Complaint—Filed February 24, 1926

Now comes the Brimstone Railroad & Canal Company, complainant, and by leave of Court, amends its bill of complaint as follows:

That paragraph XXX, page 34 of the bill be so amended as to read as follows:

XXX

(a) Complainant, the Brimstone Railroad, further shows that it has practically no local traffic and that much more than fifty (50) per cent of its entire traffic moved and

moves on proportional rates, and much less than fifty (50) per cent of its entire traffic moved and moves on joint through rates, and that a large portion of its entire revenue has been and is derived from its proportional rates.

(b) Complainant further shows that said orders of December 14, 1925, and March 10, 1924, deal with and establish divisions of proportional rates of the Brimstone Railroad & Canal Company and its connections.

(c) That the said Commission is without power and authority to establish divisions of proportional rates, and its said orders are therefore illegal, null and void.

James T. Kilbreth, W. M. Barrow, C. R. Liskow, Solicitors.

[fols. 146-153] I, Wylie M. Barrow, solicitor, for complainant, do hereby certify that copies of the above amended bill have been served by mail upon the Attorney General of the United States, the Louisiana Western Railroad Company, and the Kansas City Southern Railway Company, respondents, and on the Interstate Commerce Commission.

Wylie M. Barrow, Solicitors.

[File endorsement omitted.]

[fol. 154] In United States District Court

[Title omitted]

Burns, D. J. Concurs. Walker, C. J. Dissents.

Opinion on Application for Preliminary Injunction—Filed May 22, 1926

Before Judges R. W. Walker, Circuit Court; and Louis H. Burns and Ben C. Dawkins, District Court

Dawkins, J.:

Complainant seeks a preliminary injunction against an order of the Interstate Commerce Commission fixing the division of joint through rates between the complainant and

the defendant railroads, the contention being said order is illegal and unconstitutional for the reasons following, to-wit:

"1. That before rendering its said order and the report and opinion preceding it, the Commission did not investigate or determine the reasonableness or justness of the divisions, or whether they would be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the carriers parties thereto and participating therein, and that the Commission did not give consideration to any fact or circumstances which would entitle one of such carriers to a greater or less proportion than another carrier, or a joint rate, fare or charge, as is required by paragraph (6) Section 15 of the Interstate Commerce Act."

"2. That the Interstate Commerce Commission was, and [fol. 155] is, without jurisdiction, power or authority to determine or prescribe the divisions to be received by the Brimstone Railroad out of the joint rates, fares or charges received by the several carriers, except as between the carriers parties thereto, and except after a hearing and investigation of the operating expenses, taxes and other facts and circumstances connected with the operation of each of the carriers participating in such joint rate, fare or charge, as specifically set forth in paragraph (6) of Section 15 of the Interstate Commerce Act."

"3. That the Interstate Commerce Commission was, and is, without power, jurisdiction or authority to establish any divisions of joint rates under Section 15, paragraph (6) of the Interstate Commerce Act, except after it has established joint through rates and charges for the transportation of property, as provided in Section (15), and particularly paragraph (3) thereof of the Interstate Commerce Act."

"And, should it be held that the Interstate Commerce Commission did have jurisdiction, power and authority to determine and prescribe the divisions to be received by the Brimstone Railroad, without complying with the provisions of paragraphs (1), (3) and (6) of Section 15 of the Interstate Commerce Act, which complainant always denies, then, in the alternative, complainant alleges that the said

orders and findings of the Commi sion in controversy are and will be illegal, null and void, and result in the taking of the Brimstone's property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, because:

"1. The said orders, and particularly the report, opinion and order of December 14, 1925, attempt to determine divisions to be received by the Brimstone from its connecting carriers prior to December 14, 1925, and subsequent to August 1, 1921, thereby prescribing divisions to be applied retroactively."

"2. That the Interstate Commerce Commission was, and is, without jurisdiction, power or authority to so prescribe and determine divisions to be applied retroactively for the reason that the joint rates, fares and charges, of which the divisions received by the Brimstone Railroad from a part, were not established pursuant to a finding or order of the Commission, as is provided for by paragraphs (1), [fol. 156] (3) and (6) of Section 15 of the Interstate Commerce Act."

"Should it be held that the Interstate Commerce Commission did have jurisdiction, power and authority to determine the divisions received or to be received by the Brimstone Railroad as set forth in the last two preceding statements, then and further in the alternatives, the complainant alleges that the orders in controversy, and particularly the order of December 14, 1925, are and will be illegal, null and void, and result in the impairment of the obligation of a contract, and in the taking of the Brimstone's property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, and should be set aside, for the following reasons:

1. That the divisions which have been and will be received by the Brimstone, were and are established by agreement by and between the Brimstone Railroad and the other carriers parties thereto, and were not established pursuant to a finding or order of the Interstate Commerce Commission.

2. The Interstate Commerce Commission is without jurisdiction, power or authority to so prescribe and determine

divisions to be applied retroactively when such divisions are and have been agreed upon between the interested carriers and established by a contract between the parties thereto.

3. In the event the Court should hold that Section 15, paragraph (6) of the Interstate Commerce Act is retroactive and authorizes the Commission to make divisions of through rates prescribed by it retroactive in the cases heretofore mentioned, then it is alleged that Section 15, paragraph (6) of the Interstate Commerce Act is itself unconstitutional, null and void in that it impairs and annuls the obligation of the contracts made and entered into by and between the Brimstone Railroad, complainant, and the Louisiana Western Railroad Company, and by and between the Brimstone Railroad and the Kansas City Southern Railway Company, under and by virtue of which contracts the divisions received by the Brimstone Railroad prior to the adoption of the order of December 14, 1925, were paid, denies to the Brimstone Railroad the equal protection of the law, and takes its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States."

[fol. 157] "By amendment to the bill, the orders are further contested on the ground that the findings and orders of the Commission were made and issued without the introduction or consideration of any evidence to show the reasonableness or unreasonableness, or justness or unjustness of the divisions of the joint rates as between the carriers parties thereto, and that the said finding and orders were made and issued without the introduction or consideration of any evidence to show the reasonableness or justness, or unreasonableness or unjustness of the divisions of any particular rate, nor was any evidence introduced or considered showing the amount of service performed by the Brimstone and its several connections under all or any individual joint rate, or rates, as is required by the Interstate Commerce Act."

The orders are further contested by amendment to the bill, on the ground that over fifty (50) per cent of the entire traffic of the Brimstone Railroad moved and moves on proportional rates, and that as to such rates the Commission

is without power and authority, to establish and make retroactive divisions."

"4. Should it be held that the Interstate Commerce Commission did have jurisdiction, power and authority to determine and prescribe the divisions to be received by the Brimstone Railroad retroactively, and should it be held that Congress did have and exercise the power to annul the said contracts without violating complainant's vested rights, then, in that event, and further in the alternative, the complainant alleges that the orders in controversy are and will be illegal, arbitrary, unreasonable, unjust, null and void and confiscatory, and will result in the taking of the Brimstone Railroad's property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, for the following reasons:

"1. That the revenue which would have been received by the Brimstone Railroad & Canal Company under the divisions prescribed by the Commission from its connections, the Louisiana Western Railroad, and the Kansas City Southern Railway, would have been and is less than the reasonable, just and proper operating expenses of the Brimstone Railroad during the period from August 1, 1921, to December 31, 1925, inclusive."

"The order is further attacked as being beyond the power and authority of the Commission to make, because the Com- [fol. 158] mission has eliminated certain items of expense, actually incurred and paid by the Brimstone Railroad during the period from August 1, 1921, to December 31, 1925, as necessary in its operations as a common carrier, which items are set forth in detail and specifically and various paragraphs of the bill of complaint, and will be pointed out specifically in the argument."

Without going into other matters, I think the preliminary writ should be granted for these reasons: The order is made to operate from the date of initiating the proceedings (which were begun by the Commission upon its own motion)—in other words, is given a retroactive effect of more than four years under conditions which I do not believe, in view of provisions of the statute defining the Commission's power, is permissible.

The pertinent sections of the Interstate Commerce Act as amended by the Transportation Act of 1920, are as follows:

"Sec. 1 (4). It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operating of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers."

Sec. 15 (6). Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the division of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties [fol. 159] thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers, *and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission* and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of

revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge." (Underscoring by the writer of this memorandum.)

It is not pretended that the Commission has ever specifically considered or fixed the through joint rates, the division of which it attempts to make as between the complainant and the defendants. But it is contended that this was done by the ruling generally referred to as Ex Parte 74, 58 I. C. C., 220, et seq., in the matter of the application of carriers in Official, Southern and Western classification territories for authority to increase rates. As is generally known, that was a proceeding in which the railroads of the county filed with the Commission, during the latter part of April and early part of May, 1920, applications for a general increase of freight revenues to a basis that would en- [fol. 160] able them to earn an income "equal, as nearly as may be, to six per cent upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." The matter was considered in its broad and general aspects, first as to the country as a whole and secondly with reference to a definite grouping of the railroad systems of the United States, which were designated in the authority to increase rates as the Eastern Southern and Western groups, respectively. The Commission heard such evidence as it thought proper as to the sufficiency of these rates as applicable to each group, and accordingly allowed the increases on separate percentage bases. It did not and of course could not, in that general investigation, consider as such, any individual rates or classifications, but merely authorized flat increases in the manner indicated. In the course of its report the Commission, under the heading "Conclusion as to General Increase," at page 246, I. C. C. Reports, said:

"We are of opinion and find that the following percentage increases in the charges for freight service, including switching and special services, together with the other increases hereinbefore approved, would under present conditions result in rates not unreasonable in the aggregate under Section 1 of the act and would enable the carriers in the respective groups, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures and equipment, to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and ½ of 1 per cent in addition: eastern group, 40 per cent; southern group, 25 per cent; western group, 35 per cent; Mountain Pacific Group, 25 per cent."

It then made rules for the application of these percentages as between the respective groups.

At page 247 it was further said:

"Considerable evidence was presented with respect to the rates upon a number of individual commodities, includ-
[fol. 161] ing coal, lumber, cement, fruits and vegetables, petroleum, brick, sand, gravel and rock, asphalt, slag, grain, livestock, packing-house products, ore, bullion, potash, salt, fertilizers, and terra cotta.

Various issues have been raised or are presented as to these commodities, the principal of which are as follows: (a) Whether these should be departures from the general percentage increases by maintaining differentials or by the application of specific increases instead of percentages; (b) whether maximum increases should be provided in order to avoid the full percentage increase upon relatively high rates from distant points of production to important markets; (c) whether because of the high cost of production and marketing of some commodities, the percentage increases proposed by carriers will result in a cost delivered at points of market or consumption so great as to curtail production and distribution, an undesirable situation at this time of world shortage of commodities; (d) whether a more general necessary use warrants a lower transportation charge;

(c) whether the rates effective June 24, 1918, before General Order No. 28 became effective, should be made the basis of readjustment now by applying thereto a 25 per cent increase and superimposing thereon the percentage increases now found reasonable. *Our general conclusions as to the impracticability of specific increases or of attempting now to maintain differentials dispose of a number of these contentions. It should also be said that while we do not here sanction specific increases in lieu of percentages, we are not to be understood as expressing disapproval of increases of that character made by the Director General. Such increases were made under war conditions and under circumstances that do not now exist.*

Our attention was called at the hearing to a number of formal complaints now pending, and we are asked to except from the general increase the rates in issue in those complaints. This would have the effect, during the pendency of those proceedings of giving the rates in question a preferred standing and of exempting them from the general increase. *In our opinion, a fairer disposition will be attained by applying the general increase to these rates, with the understanding that this action is without prejudice to any future findings.*"

(Underscoring by the writer.)

[fol. 162] It next took up specifically some of the contentions with respect to the commodities mentioned by it above and in each instance declined to itself fix or adjust such rates except as to the percentage of increase, and in many instances left the matters to be adjusted by the carriers and in others directed the application of the straight percentage increase as will be demonstrated by the following:

With respect to coal the Commission said:

"Coal: Carriers serving the Pennsylvania-Ohio-West Virginia coal fields propose to continue the existing differentials in coal rates, and have worked out a scheme of rates to effect that result. Carriers in the southern and western groups propose to ignore existing differentials in coal rates within those groups. The proposal of the eastern lines to preserve existing relationships is approved, and carriers in other groups should work out a similar plan for restoring the relative adjustments of coal rates

now obtaining in those groups. An effort should be made promptly to devise rates in each group that will yield, as nearly as practicable, the same revenue in the aggregate as would be afforded by a straight percentage increase on the bases herein approved." Id. p. 248.

With reference to lumber, the conditions peculiar to that commodity were mentioned and it was said:

"For the purpose of this report it is our opinion that the percentages hereinbefore approved should apply to this commodity." Id. p. 249.

The conclusions with regard to petroleum were:

"It is concluded that no exception to the general percentage increases herein approved need at this time be made upon petroleum or its products. As has been observed in connection with other situations, the carriers should give careful consideration to the effect of the percentage increases approved on petroleum and, if necessity arises, should arrange for such modifications as the situation may seem to warrant." Id. p. 249.

[fol. 163] In dealing with sand, gravel, etc., the conclusion announced was:

"We are not convinced that exceptions should be made at this time from the percentages approved for traffic generally. However, the record does suggest that rates in eastern territory are out of proportion to those in the other groups. The carriers have indicated a willingness promptly to readjust rates in cases where hardships results from the general percentage increases, and their special attention is called to these commodities to the end that such action may be taken as the facts may seem to warrant." Id. p. 250-251.

Again, as to grain and grain products, the Commission directed as follows:

"Carriers and shippers unite in recommending that this equlization be continued because of the keenly competitive situation of the various markets and of the lines of railway serving such markets. However, sufficient detailed information to cover fully the situation is not before us upon

this record. We find that the grain rates into and out of these markets may be increased by the general percentages herein approved, with the understanding that the carriers will, within thirty days after the service of this report, file tariffs restoring the equalization through the grain markets now enjoying that basis. This should be done after conference with interested shippers, and, if desired, we will lend our cooperation in the premises." Id. p. 253.

And finally, in dealing with conditions, such as the one in this case, it was said:

"In many cases divisions between carriers are in the form of specific amounts per unit. It is obvious that unless divisions of this character be increased, such lines will receive no benefit from the increases herein approved, while the other carriers will receive more than the respective percentage increases applicable to the traffic. It is concluded that where carriers earn specific amounts as their compensation out of through rates or fares, such amounts should be increased in the same percentages as the through rates or fares. Where the divisions of carriers participating in through rates or fares are in fixed amounts per unit and are absorbed by other carriers, such absorptions should be increased in the same percentage as the through rates or [fol. 164] fares." Id. p. 254.

All of which demonstrates what the Commission was attempting to do was to allow such increases in freight rates as would meet the urgent and immediate needs of the carriers, without regard to the reasonableness or unreasonableness of any through or joint rates, and it clearly declined in each instance to fix or approve any specific rates.

Can it be said, in view of these circumstances, that the action of the Commission meets the condition precedent imposed by Congress for making its rulings retroactive to the date of initiating the investigation "in cases where the joint rate, fare or charge *was established pursuant to a finding or order by the Commission* * * *?" There has never been, so far as the record in this case discloses, any joint rate "established" by the Commission. As above pointed out, all that was done in Ex Parte 74, was to authorize the railroad companies of the country to increase their rates within the maximums fixed for each group.

What has been said with regard to the increasing of rates in 1920 is equally applicable to the action of the Commission in the matter of Reduced Rates in 1922.

It must not be forgotten that the power to make rates or to adjust the divisions thereof is a legislative function and where the Commission is permitted to make its rulings and orders, having the effect of legislation, retroactive, the existence of the conditions required by the statute must be beyond question. The general rule is that such provisions, as well as judgments, take effect from their enactment or rendition, and power such as that sought to be exercised in this case, is a rare exception under modern government. Union Pacific Ry. Co. vs. Stockyards Company, 231 U. S., 190, 58 L. Ed. 179, and authorities therein cited; 25 R. C. L., [fol. 165] 1010, Sec. 250.

The Commission itself, in effect, held in two cases that general orders granting to the railroads permission to increase their rates upon a percentage basis, did not amount to an approval of existing rates. In Globe Soap Company vs. A. & S. Ry. Co., 40 I. C. C., 121, it used this language:

"The permission given The Five Percent Case, supra, was necessarily general. That case did not approve any specific rate as reasonable in itself or as properly adjusted with respect to other rates, nor did it justify in advance any rate which might be published as a result thereof. The act casts upon the carrier the burden of proof to show that a rate increased after January 1, 1910, is just and reasonable and that burden is not removed by a general permission of the Commission, such as that relied upon by the defendants, for it is the total rate which must be justified and not the amount of the increase. Under the law the burden in this case was upon the defendants to show that the rates complained of were just and reasonable. They have failed to sustain that burden."

And again, in Steel & Tube Company vs. Director General, 61 I. C. C., p. 526, it was said:

"We need not discuss further this phase of the controversy, for, regardless of any interpretation which may be placed upon that order, our sanction of a general adjustment does not carry with it the approval of any par-

ticular rate. Globe Coal Co., vs. A. & A., Ry. Co., 40 I. C. C., 121."

And finally, the statute itself, in paragraph 3 of section 15, provides the manner in which joint rates or charges, such as those involved in this case, may be fixed by the Commission. It reads:

"3. The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable [fol. 166] to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged, (or in the case of a through route where one of the carriers is a water line, the maximum rates, fares and charges applicable thereto) and the division of such rates, fares and charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line, etc." (Underscoring by writer of this opinion.)

What is meant by a full hearing? It would seem clear that Congress intended that there should be a full hearing of the facts and consideration of the conditions upon which particular joint rates or charges were to be established. As above stated, this had not been done in the present case prior to the proceeding to adjust divisions of rates between the complainant and the other parties, and in our opinion the Commission cannot make its order effective from the date of beginning the investigation. For these reasons the preliminary writ should be granted.

_____, U. S. D. J.

James T. Kilbreth, Baton Rouge, La.; W. M. Barrow, Baton Rouge, La.; C. E. Liskow, Lake Charles, La., Attorneys for Complainant.

Daniel W. Knowlton, E. M. Reidy, Washington, D. C., Attorneys for Respondent.

[File endorsement omitted.]

[fol. 167] In United States District Court

[Title omitted]

Decree—Filed June 1, 1926

This cause came duly on to be heard after notice to defendants, according to assignment, before the Honorable R. W. Walker, Circuit Judge, and the Honorable Ben C. Dawkins, and the Honorable Louis H. Burns, District Judges, at New Orleans, Louisiana, on March 13th, 1926, A. D., upon the complainant's application for temporary injunctions, and was heard by the said three judges upon the bill of complaint duly verified and filed, upon the answers, and upon the proof and affidavits filed. W. M. Barrow and C. R. Liskow, appearing as solicitors for the complainant; Blackburn Esterline, Special Assistant to the Attorney General for the United States of America; Harry McCall, for the Louisiana Western Railroad Company; and Daniel W. Knowlton and E. M. Reidy, for the Interstate Commerce Commission. And, after due deliberation, for reasons assigned in the opinion filed herein in this case on May 22nd, 1926, A. D., it is

Ordered, adjudged and decreed, that a preliminary injunction issue herein against the Attorney General of the United States, Assistant Attorneys General, Special Attorneys, and all others acting for or on behalf of the United States, enjoining the said Attorney General, Assistant Attorneys General, Special Attorneys, and all others acting for or on behalf of the United States, from collecting or attempting in any manner to collect any penalties [fols. 168-173] from the Brimstone Railroad & Canal Company for its failure to comply with the orders of the Interstate Commerce Commission of March 10th, 1924, and December 14th, 1925, or any part thereof; and against the Louisiana Western Railroad Company, and against the Kansas City Southern Railway Company, and all of their officers, agents, employees, and all other persons acting or claiming to act under their authority, direction and control, enjoining the said Louisiana Western Railroad Company and the said Kansas City Southern Railway Company, and all of their officers, agents, employees, and all

other persons acting or claiming to act under their authority, direction and control, from attempting to enforce or put into effect any portion of the said orders of the Interstate Commerce Commission dated March 10th, 1924, and December 14th, 1925; and against the Interstate Commerce Commission, and all persons claiming to act under its authority, direction and control, enjoining and restraining the said Interstate Commerce Commission, and all persons claiming to act under its authority, direction and control, from enforcing or attempting to in any wise enforce or put into effect its orders of March 10th, 1924, and December 14th, 1925, all of the said orders of the Interstate Commerce Commission having been issued in the proceeding entitled: "Divisions Received by the Brimstone Railroad & Canal Company," No. 12,869 on the docket of the said Commission. It is further,

Ordered, Adjudged and Decreed, that the said temporary injunctions shall remain in force and effect and be complied with until the further order of this Court in the premises.

Dated at New Orleans, Louisiana, this 31st day of May, 1926, A. D.

_____, Judge. Ben C. Dawkins, U. S. D. J.
Louis H. Burns, U. S. D. J.

[File endorsement omitted.]

[fol. 174] In United States District Court

[Title omitted]

Statement of Evidence

Narrative Form of Evidence

Statement Showing Scope of Evidence

On August 1, 1921, the Interstate Commerce Commission issued and served upon the Brimstone Railroad and Canal Company and other respondents the following order:

"The Commission having under consideration the rates on crude and fuel oil, in tank cars, from certain Texas

points to Sulphur Mine, La., application over the Southern Pacific or Kansas City Southern Railroad in connection with the Brimstone Railroad & Canal Company, and on shipments of sulphur in carloads, from Sulphur Mine over the said railroads:

It is ordered, That the Commission upon its own motion enter upon an investigation into and concerning the justness, reasonableness, and equitableness of the divisions received by the Brimstone Railroad & Canal Co. out of the joint rates applicable to the transportation of property over said railroads.

It is further ordered, That the Brimstone Railroad & Canal Company, the Southern Pacific Company, and the Kansas City Southern Railway Company be, and they are hereby made respondents to this proceeding, and that a copy of this order be served upon such respondents; and [fol. 175] that notice of this proceeding be given to the general public by depositing a copy of the order in the office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at such time and place as the Commission may hereafter direct."

Pursuant to the said order, a hearing was held at Washington, D. C., October 18, 1921, before Attorney-Examiner Gerry.

S. W. Maxwell, President of the Brimstone Railroad and Canal Company, testified substantially as follows:

The Brimstone Railroad and Canal Company was incorporated under the laws of the State of Louisiana in 1905, as a railroad corporation with a capital stock of $100,000.00, divided into 1,000 shares par value $100.00 each. The railroad was constructed in the summer of 1905, and placed in operation in the early part of 1906, having a connection with the Louisiana Western Railroad at Brimstone Junction, and with the Kansas City Southern at Mossville. In 1914, the capital stock was increased to $200,000.00, all of which is outstanding. It has no funded debt. The Union Sulphur Company owns all but five shares of

the stock, and it is the principal industry served by the Brimstone Railroad.

The Brimstone Railroad is located in the southwestern part of Louisiana, near Lake Charles. It owns and operates 7.39 miles of main track, and 1.68 miles of spur track, and, in addition, operates 2.86 miles of main track under trackage rights acquired by lease from the Kansas City Southern. It uses jointly with the Union Sulphur Company 6.80 miles of spurs and sidings belonging to the Sulphur Company, and it uses jointly with the Southern Pacific .80 mile of side track belonging to the Southern Pacific.

In connection with this testimony, the charter of the [fol. 176] company was filed as Exhibit Number One, and a map showing the location of the carrier's property was filed as Exhibit Number Two, and a second map showing in greater detail the tracks of the Brimstone Railroad and the tracks of the Union Sulphur Company was filed as Exhibit Number Three.

The Brimstone owns three locomotives and 156 freight cars, all standard trunk line equipment, and uses the freight cars for shipments of sulphur from Sulphur Mine, La., to Sabine, Texas. Under a verbal agreement, the Brimstone operates over 6.80 miles of track of the Union Sulphur Company, handling and placing empty and loaded cars for the Sulphur Company and for the general public on the joint tracks. Under a verbal agreement, the Brimstone also uses a portion of the Union Sulphur Company's warehouse as a freight station, from which deliveries to the general public are made. The tracks adjacent to the freight warehouse are used by the Brimstone as team tracks, from which the general public receives and ships freight. Under a verbal agreement, the Brimstone operates .80 miles of side track owned by the Southern Pacific (Louisiana Western) at Brimstone Junction, at which point freight is interchanged with the Southern Pacific, and has trackage rights of 2.86 miles over the interchange track of the Kansas City Southern Railway.

The Brimstone Railroad, besides the Union Sulphur Company, serves the Krause and Mannagan Lumber Company warehouse and the Houston River and Canal Company, and serves numerous farmers along its line. The Parish

of Calcasieu has made extensive shipments of sand and gravel and other road building material to points on the Brimstone for constructing, repairing, and maintaining [fol. 177] public roads.

The Brimstone Railroad is taxed as a common carrier by the State of Louisiana, and complies with State and Federal laws governing common carriers. Its tariffs are filed with the Interstate Commerce Commission and the Louisiana Public Service Commission, and it makes annual reports to State and Federal authorities.

The Brimstone spots cars for the Union Sulphur Company on the Union Sulphur Company's tracks. The Union Sulphur Company furnishes approximately ninety-eight per cent of the traffic handled by the Brimstone, which has no passenger or express business. The Brimstone maintains a freight station, issues the bill of lading, does its own billing, owns a track scale, upon which, for the purpose of assessing freight charges, cars are weighed, and which scale is under the supervision and inspection of the Western Weighing & Inspection Bureau.

In the annual report of the Brimstone to the Commission for the year ended December 31, 1920, the average length of haul is shown as .95 mile, which is the haul over the tracks owned by the Brimstone Railroad only, and does not include the additional haul over the tracks used jointly by the Brimstone and the Southern Pacific and by the Brimstone and the Union Sulphur Company. The average haul performed by the Brimstone of shipments moved via Brimstone Junction and the Southern Pacific, including tracks leased from the Southern Pacific and from the Union Sulphur Company, is 3.50 miles; and the average haul of the shipments moved via Lockport Junction, where interchange is made with the Kansas City Southern, is fifteen miles, [fol. 178] these mileages being the round trip mileage.

The service performed by the Brimstone Railroad on shipments from the Union Sulphur Company include the weighing of empty and loaded cars, in conformity with the general practice among railroads throughout the country.

From the loading tracks of the Union Sulphur Company near the sulphur bins, the cars are moved over the tracks of the Union Sulphur Company to the connection with the Brimstone tracks, a distance of approximately one-half mile,

by the motive power of the Brimstone Railroad and Canal Company. The same power handles the car to the Brimstone track scales, where the car is weighed. It is then hauled back over the main line, out over the west leg of the Brimstone wye, and delivered to the interchange tracks of the Southern Pacific. A car taken directly to the Southern Pacific interchange from the Sulphur loading tracks would be hauled approximately 1.25 miles.

The Southern Pacific accepts the weights of the Brimstone Railroad in assessing freight charges (R. 10-29).

In hauling a car from the Union Sulphur Company's loading tracks to the Kansas City Southern interchange track, there is no back haul on account of the scale; but in moving cars to the Southern Pacific interchange, there is a back haul of one-half mile.

The Union Sulphur Company loads an average of twenty-five cars a day with sulphur. There is an empty movement to the sulphur mine to get the loaded movement out.

The Brimstone handles oil into the Sulphur Company's plant. Oil from the Southern Pacific is taken from the rails [fol. 179] of the Southern Pacific, pulled over what is known as the Brimstone Division, over the west leg of the wye, up and over the main line of the Sulphur Company's tracks from their connection with the Brimstone, and the cars are spotted at the unloading racks of the Union Sulphur Company, from which they are removed by the same engine from time to time, and other loads spotted in their place. The total distance the Brimstone would move a carload of oil in handling the shipment from the Southern Pacific for delivery to the Union Sulphur Company is about half a mile over the Southern Pacific leased tracks; a quarter of a mile over the Brimstone; and from one-half to three-quarters of a mile over the Union Sulphur Company's tracks. The direct movement inbound of the loaded oil car would be from 1.25 miles to 1.75 miles. On the empties returned, the cars are moved direct over the main line of the Sulphur Company's tracks on to the Brimstone tracks over the west leg of the wye, and on to the Southern Pacific interchange tracks, the distance being the same as the inbound movement.

On cars handled from the Kansas City Southern at Mossville, the movement is over the main line of the Brimstone

to its connection with the Union Sulphur Company's tracks, thence over the Sulphur Company's tracks, down past the warehouse, around the curve, and then pushed back to the same oil unloading racks (R. 31-33).

The empty car movement to the Kansas City Southern would be exactly the reverse of the inbound movement of the loaded car.

On shipments of rice moving from the Krause and Managan warehouse, the car is moved westward over the [fol. 180] main line of the Brimstone Railroad a distance of approximately 4.8 miles, where the car is weighed and continued on its way to the Southern Pacific interchange, a further distance of .75 mile, and thence on to the tracks of the Southern Pacific, a distance of approximately one-half mile, a total movement of approximately 6.5 miles.

The Brimstone Railroad owns one track scale. Before revenue shipments leave the line of the Brimstone, it is the practice to obtain the track scale weight on that shipment by weighing the car on the Brimstone track scale.

The Brimstone tracks stop at points designated on the map at the end of both the east and west leg of the wye. To deliver a car to the Southern Pacific, it is necessary to go on to the tracks of the Southern Pacific, where delivery is made. The Brimstone uses approximately one-half mile belonging to the Southern Pacific covered by a verbal contract (R. 35-36).

The movement of cars either inbound or outbound is the same, whether the traffic is Union Sulphur Company traffic or other traffic.

Under a contract with the Kansas City Southern, the Brimstone delivers all loads on its main line at Mossville and takes all empties off the siding of the Kansas City Southern, which parallels the Brimstone Railroad at Mossville—a reciprocal movement.

In the movement of oil into the Union Sulphur Company's plant, the Brimstone uses the tracks of the Union Sulphur Company. None of the side tracks or spur tracks owned by the Brimstone are used by the Union Sulphur Company exclusively.

The Brimstone has never constructed or provided itself with any side track into the property of the Union Sulphur [fol. 181] Company. The service performed by the Brim-

stone for the Union Sulphur Company is performed over the tracks and facilities that have been provided by the Union Sulphur Company. The Brimstone has not provided all of the facilities for the handling of its business which it could properly and rightfully be required to provide; but in order to provide itself with facilities that might be properly required of it for the use and handling of traffic at Sulphur Mine, an exhibit was prepared and filed by the carrier showing what would be necessary in the way of additional capital expenditures and additional spur tracks and storage tracks that would be necessary to take care of the common carrier obligations of the Brimstone at Sulphur Mine, La. This exhibit was offered as Exhibit Number Four. The exhibit shows the outlay of capital investment necessary to provide additional tracks and other appliances which would be necessary in carrying on the business (R. 37-40).

The Union Sulphur Company owns approximately ten miles of plant track, which are shown on Exhibit Number Five (R. 41).

On Exhibit Number Six, the tracks of the Union Sulphur Company that are used by the Brimstone Railroad and Canal Company in the handling of its common carrier business at Sulphur Mine are shown.

The Union Sulphur Company owns and operates seven locomotives of standard gauge, and performs all of its intra-plant switching (R. 41-42).

The Brimstone does not perform any service for the Union Sulphur Company in the handling of its loads in and out other than the mere shoving of the cars in on the plant tracks of the Union Sulphur Company and pulling the [fol. 182] empties out (R. 42).

So far as oil is concerned, the cars are spotted at the points of unloading on the tracks of the Union Sulphur Company. The cars loaded with sulphur are kicked from the loading tracks on to a spur or siding by the Union Sulphur Company's engine, and from that spur or siding are removed by the Brimstone's engine. This spur or siding is in the nature of an interchange track (R. 42).

In handling oil, a string of cars, some twelve or fourteen, are placed on the unloading track, and the empties are pulled out in the same manner. The Union Sulphur Company does not ship the carloads of oil inside the plant (R.

43-44). The Union Sulphur Company does not perform any service with the oil cars. On empty cars delivered to the Union Sulphur Company for loading with sulphur, the Brimstone pushes the cars down the main line of the Sulphur Company's track on to any one of the various loading tracks of the Union Sulphur Company, noted on the map as "Sulphur storage bin tracks." That is the end of the service performed by the Brimstone in delivering empties to the Union Sulphur Company for loading. The number of cars shoved in at one time varies in accordance with the number of empties received. There are sometimes as many as twenty or twenty-five. After the empties have been delivered to the Union Sulphur Company, as they are required for loading, they are picked up by the engine of the Sulphur Company and spotted at what is known as the box car loading plant in the Union Sulphur Company's plant. The service of spotting the cars at the box car loading plant is performed by the power and the employees of [fol. 183] the Union Sulphur Company and entirely over their plant tracks. After the cars are loaded, the Union Sulphur Company places them on any one of the loading tracks until the track is filled up; and when the cars are spotted on one of the loading tracks, or bin tracks, as they are called, they are then removed by the Brimstone engine. The Sulphur Company makes up the train on the bin track, or loading track, and the Brimstone engine removes them from this track.

Shipments of iron and steel articles, cement, brick, and articles of that nature intended for use of the Sulphur Company were spotted where they were to be used by the Union Sulphur Company, if the material was to be used near the Brimstone connection; but if the material is used around on the various small tracks of the Sulphur Company, the car is spotted by the Sulphur Company engine. (R. 45-46.)

The Brimstone engines are manned strictly by full-time crews, and the Sulphur Company's engines by the Sulphur Company's employees. Quite often solid trainloads of sulphur are shipped from Sulphur Mine, La., to Sabine, Texas. (R. 46-47.) The maintenance crews devote part of their time to the Union Sulphur Company and part of their time to the Brimstone Railroad. (R. 48.)

The Union Sulphur Company owns the terminals for handling sulphur at Sabine, Texas, and loads its shipments at that point. It has no plant facilities, locomotives, or side tracks at Sabine, Texas. (R. 47-48.) All side tracks and equipment necessary for the handling of business at Sabine, Texas, are provided exclusively by the railroad company serving that point. In handling shipments to Sabine, Texas, the Southern Pacific does the necessary [fol. 184] switching at that point in the handling of sulphur shipped over the lines of the Southern Pacific for delivery into the terminals of the Sulphur Company at Sabine. (R. 48.)

Comparing the service that is afforded the Union Sulphur Company at Sabine by the Southern Pacific with the service that is afforded the Union Sulphur Company at Sulphur Mine, La., by the Brimstone, the Southern Pacific performs a far greater service at Sabine, Texas, relatively, than does the Brimstone at Sulphur Mine.

The rice growers along the line of the Brimstone Railroad have, at various times and places, requested the Brimstone Railroad to provide warehouse facilities for the proper handling of rice grown adjacent to the railroad, and facilities in the way of tracks have been provided. The different rice shippers provide their own warehouses, leasing the land at a nominal rental per year from the railroad company, that being the common practice of the carriers in the rice section. (R. 49-50.)

Solicited letters commending the Brimstone upon the services it has afforded shippers for the movement of their crops and products were filed as Exhibit Number Seven. (R. 50-51.)

Approximately 8,000,000 pounds, or 4,000 tons of road building material was handled by the Brimstone in the period from 1918 to 1921, for which a spur track was provided. (R. 52.) Various spur tracks have been provided by the Brimstone for the delivery of road building material. In addition to the use of these spurs for the delivery of road building material, they are used for the loading of rice, unloading of rice, fertilizer, bags, machinery, or anything [fol. 185] consigned to farmers. (R. 53.)

In the first nine months of the year 1921, the total shipments moving out from the various points where side

tracks were provided amounted to 7,408,000 pounds. The total rice movement amounted to 4,680,000 pounds. There is also a substantial movement of lumber over the line. There is considerable hardwood located adjacent to the line which would warrant the operation of the average saw mill. (R. 54.)

The Brimstone Railroad is a party to various through tariffs, which is discussed by a later witness.

There have been shipments of grain from points on the Kansas City Southern under a milling-in-transit arrangement to points on the Brimstone. (R. 55.)

The Brimstone is subject to the Federal Labor Board and is required to pay the standard scale of wages to its employees; and it complies with the requirements of that Board. (R. 55-56.)

The Brimstone does not maintain a regular maintenance of way crew, but borrows such crew from the Union Sulphur Company, and the payment for the services is made by the Brimstone to the Union Sulphur Company. The maintainance of way crew of the Union Sulphur Company is paid only for the time it works on the Brimstone Railroad, thus relieving the Brimstone of maintaining a crew constantly on duty. The Brimstone Railroad is maintained in a state that would permit trunk line equipment to operate over it. All of the equipment of the Brimstone is trunk line equipment.

The Brimstone does not maintain or operate repair shops. Its repair work is done by the Union Sulphur Com-[fol. 186] pany and charged to the Brimstone at cost plus thirty percent. This is the basis that is generally in effect on other trunk lines in the same section as the Brimstone. The Union Sulphur Company maintains and operates an extensive car repair locomotive and machine shop, and keeps on duty constantly a considerable force of mechanics and employees to take care of their own repairs. If it were not possible for the Brimstone to avail itself of the Union Sulphur Company's shops, it would have to build its own shop and provide its own repair crews and add materially to the operating costs of the Brimstone. (R. 57.)

No section gang is regularly maintained by the Brimstone, but the Union Sulphur Company maintains a large

force of track labor constantly on hand for the maintenance of its plant facility tracks, and the Brimstone obtains from the Sulphur Company experienced track labor at all times. There is not a sufficient amount of work on the Brimstone to keep a maintenance of way crew constantly on duty. (R. 58.) The crews of the engines of the Brimstone Railroad are carried on the Brimstone Railroad direct at all times. They are full-time crews. In connection with repairs of equipment and maintenance of way, the work is performed by the Union Sulphur Company by men loaned to the Brimstone, at the request of the Brimstone, and kept at work until completed, when the crews are then turned back to the Union Sulphur Company.

The officers of the Brimstone Railroad, with the exception of the president, are all officers of the Union Sulphur Company, with the exception of the secretary of the Brimstone, who is not an officer of the Union Sulphur Company. (R. 60.)

The Brimstone maintains one open station at Sulphur [fol. 187] Mine and keeps an agent on duty during business hours of the day. All tariffs applicable over the Brimstone are kept on file for public inspection at Sulphur Mine, La.

The Brimstone Railroad has never engaged in passenger business, nor handled mail or express. Small supplies are purchased by the Brimstone from the Union Sulphur Company. Large supplies, such as steel, ties, or any materials in connection with extensive work, are purchased direct by the Brimstone. The small supplies are purchased from the Union Sulphur Company in order that the Brimstone may avail itself of the prices which the Union Sulphur Company gets because they buy in large quantities. (R. 61.) The Sulphur Company maintains stocks of supplies constantly on hand at Sulphur, which obviates the necessity of the Brimstone Railroad carrying a considerable stock on hand to meet the necessities. This results in a material saving of expense to the Brimstone Company. (R. 61.)

The bridges and structures on the Brimstone Railroad are constructed to withstand the strain of heavy traffic.

No charge is made against the Brimstone Railroad by the Sulphur Company for the use of the warehouse used by the Brimstone or for the use by the Brimstone of the tracks

necessary in reaching the warehouse, or for the use of the public team tracks. The train shed of the Union Sulphur Company is used by the Brimstone without charge to the Brimstone.

The Brimstone obtains its supply of fuel oil from the Union Sulphur Company. The Union Sulphur Company is a large consumer of fuel oil, using about 4,000 barrels per day. In the purchase of oil, better prices are obtained [fol. 188] where large quantities are bought and long term contracts are made. The price paid by the Brimstone to the Union Sulphur Company for its fuel oil is the average cost to the Union Sulphur Company each month. (R. 65-66.) This cost to the Brimstone does not include any overhead expense, nor any other charge for taking the oil out of storage tanks and delivering it on the Brimstone engines. The Brimstone pays the actual bare average invoice price to the Union Sulphur Company.

Water used by the Brimstone is obtained from the Union Sulphur Company without charge to the Brimstone. (R. 66.) In reaching the water station of the Union Sulphur Company, where the Brimstone obtains its water for its engines, approximately three-quarters of a mile of the Union Sulphur Company's tracks is used, and approximately three-quarters of a mile of track is used by the Brimstone in reaching the fuel supply for its engines. (R. 67.) The Union Sulphur Company does not make any trackage charge against the Brimstone for the use of any of the tracks used by the Brimstone in reaching the warehouse, the repair shops, the water tanks, and the oil tanks. (R. 68.)

The Brimstone maintains its general offices at Sulphur Mine and obtains office room from the Union Sulphur Company. It pays the Union Sulphur Company $5.00 a month for the offices which it occupies. Light, heat, water, and telephone service are provided free of charge. (R. 69.)

The vice president, the agent, the secretary, and the president of the Brimstone Railroad have their headquarters at Sulphur Mine. An engineer and a bookkeeper are also locate dat Sulphur Mine.

[fol. 189] The settlement at Sulphur Mine is made up of the employees of the Brimstone and the employees of the Sulphur Company. The population is about 3,000. Sul-

phur is another town about two and one-half miles from Sulphur Mine on the Southern Pacific.

The Brimstone serves several hundred people in addition to the employees of the Union Sulphur Company and the Brimstone Railroad. A modern system of highways built under the supervision of the United States Government enables people living distances away to readily reach the spurs that have been provided by the Brimstone for the shipment of their products. The building of these highways has shown a tendency to develop the interior sections of the country. (R. 73.)

The various services performed by the Union Sulphur Company for the Brimstone for which no charge is made have had the effect of making a very material saving in the operating expenses of the Brimstone. Exhibit Number Eight is a statement showing the approximate cost to the Brimstone Railroad for taking care of its necessary and natural operating expenses at Sulphur Mine, such as the furnishing of fuel oil and the furnishing of its water, its station, land, and additional switching of cars. If the Brimstone had to provide a water tank and a fuel supply station, it would first have to put down a water well and build a tower with a tank to hold the water; it would be necessary to put up a fuel tank, provide a small engine to handle both the water and the fuel, and a man to operate the same. Stations and offices would have to be provided, and regular maintenance of way crews would have to be maintained on duty at all times. Additional switching crews would be needed to handle the movement. (R. 76.)

[fol. 180] The item of taxes alone on the additional facilities would amount to $3,612.00 per year. The additional investment necessary to provide the facilities furnished by the Union Sulphur Company to the Brimstone would be $182,500.00.

Exhibit Number Nine is a statement showing the shipments of freight received and forwarded by independent shippers other than the Union Sulphur Company via the Brimstone for the first six months of 1921. This exhibit shows that rice is the principal item, of which 125 pounds were received, and 4,680,806 pounds forwarded.

Exhibit Number Ten is a balance sheet of the Brimstone Railroad and Canal Company for the year ending August 31, 1921. The net operating income for that period is 28,481.86. For the year ending December 31, 1920, the net operating income was 39,588.17. (R. 78.)

Exhibit Number Eleven is a statement of the income account for the six month period ending June 30, 1921.

The Brimstone collects demurrage from all shippers. On foreign cars, it receives a per diem under the rules of the American Railway Association. (R. 82-83.) The Union Sulphur Company has executed with the Brimstone an average demurrage agreement. (R. 83.)

Cross-examination.

The gondola cars belonging to the Brimstone are used exclusively for interchange with trunk line connections. One switching crew or engine crew is operated ordinarily on an eight hour daily schedule. They have some idle [fol. 191] time nearly every day. They make deliveries within that eight hours to the Kansas City Southern and to the Southern Pacific, respectively, and take loads from the Southern Pacific and the Kansas City Southern, respectively. (R. 86-87.)

Mr. Maxwell is president of the Brimstone Railroad and Canal Company and assistant secretary of the Union Sulphur Company, and actually renders service to both companies in the proportion of about fifty per cent to each. He receives salaries from both companies, and has an office at Sulphur Mine in the building of the Union Sulphur Company. He has stenographers employed by the Union Sulphur Company to perform work for the Brimstone. The first vice president, second vice president, and treasurer of the Brimstone also have positions with the Union Sulphur Company, with offices in New York. The Brimstone also has a secretary, an auditor, a traffic manager, and an assistant traffic manager, with offices in New York. (R. 91.)

The Brimstone to all intents and purposes lies wholly without the plant proper of the Union Sulphur Company. (R. 99.)

The Brimstone acquired its right of way by purchase from the owners of the land through which the railroad passed. (R. 102.) The major portion of the right of way going east to Mossville was acquired from others than the Union Sulphur Company. (R. 103-104.)

Exhibit Number Ten, "Balance sheet as of August 31, 1921," shows a profit and loss item amounting to $193,000.00, this being the profit or surplus on that date, as shown by the statement.

All of the facilities mentioned as provided free by the Union Sulphur Company to the Brimstone was the result [fol. 192] of a practice of long standing; just simply entered into years ago and allowed to remain that way. (R. 119.)

There is no town or settlement within a mile of the station at Sulphur Mine other than the community of the Union Sulphur Company and the Brimstone employees. Within a very short distance there are settlements, and about 50 individuals live within a mile of the station at Sulphur.

Shipments of pipe, groceries, dry goods, contractors' outfits, and lumber were made to independent shippers. (R. 125.)

The population along the Brimstone Railroad is scattered, and there is a settlement at Portietown, which depends upon the Brimstone for transportation. The map filed as Exhibit Number Three was explained by the witness. (Note: A map showing the properties of the Brimstone was filed as an exhibit to the bill of complaint and will be used in argument, instead of the various maps filed at the several proceedings in this case.)

The Brimstone does some work jointly with the Union Sulphur Company on the Union Sulphur Company's tracks, such as placing steel gondolas for recleaning and painting and re-stenciling. The Brimstone places cars at the warehouse and unloads less than carload freight, and receives less than carload freight there. The warehouse owned by the Union Sulphur Company is used as the freight station of the Brimstone. This warehouse is also used as a supply warehouse for the Union Sulphur Company. (R. 134-136.)

The man in charge of the warehouse is paid by the Union Sulphur Company to perform services as agent for the Brimstone.

The plant facility tracks used by the Brimstone within the plant of the Union Sulphur Company are about the same length as the total tracks of the Brimstone outside the [fol. 193] plant. The total length of the Brimstone's tracks outside of the plant of the Union Sulphur Company is approximately ten miles, including main line and sidings, consisting of .75 mile on the Brimstone Division, 6.64 miles on the Mossville Division, the balance being spurs and sidings.

Oil from the Southern Pacific interchange moves approximately one-half mile over the Southern Pacific tracks; approximately one-quarter of a mile over the Brimstone tracks, and between one-half and three-quarters of a mile over the tracks of the Union Sulphur Company. (R. 138-139).

The witness did not know the percentage of the total movement of outbound sulphur moving by way of Brimstone Junction and the Southern Pacific and that which moves by way of Mossville and the Kansas City Southern. Information on this subject was furnished at the request of the Examiner in exhibit form after the close of the hearing.

The Brimstone takes oil shipments all the way to the storage place for oil and brings the empties all the way back, whereas, on shipments of sulphur, the work is done by the Sulphur Company itself. The Brimstone engine goes in on the tracks of the Union Sulphur Company and pulls the loaded cars out, just the same as it goes in on the Union Sulphur Company's tracks and pulls the empty oil cars out. The Union Sulphur Company's engine pulls the loaded cars away from the loading plant, spots them on some other track in a train, from which track they are removed by the Brimstone engine. The Sulphur Com- [fol. 194] pany's storage bin tracks lead out to what is known as the Sulphur Company's main line tracks, which continue on down to the junction with the Brimstone Railroad. The Brimstone goes all the way up to these storage tracks to get the loaded cars of sulphur and place them out. The car coming out of the loading plant travels approximately half a mile over the Sulphur Company's tracks.

The car is then taken to the scale, which was loaded on the Brimstone tracks, a distance of half a mile from a point shown in connection with the Union Sulphur Company, then weighed, and taken over the Brimstone Division a distance of three-quarters of a mile, and then delivered to the Southern Pacific tracks, approximately half a mile. The cars are weighed at the scale to get the billing weights. The weigh-master is the authorized weigh-master of the Western Weighing and Inspection Bureau. He is also the foreman of the Brimstone engine. He is joint yardmaster for the Union Sulphur Company and the Brimstone, all of his salary being paid by the Union Sulphur Company.

The Brimstone has no open stations except the station in the warehouse of the Union Sulphur Company, but it has prepay stations along the spurs where freight is delivered on the Brimstone. These points are shown on the tariff of the Brimstone.

Some inbound cars of brick and other miscellaneous material are sometimes spotted by the plant locomotive, and sometimes spotted by the Brimstone locomotive. A miscellaneous car of merchandise is taken by the Brimstone engine to the warehouse of the Union Sulphur Company, where deliveries are made to various shippers. (R. 146-148.) A car consigned to any point within the plant will sometimes be spotted by the Brimstone engine at times when the Sulphur Company's engine may be busy.

[fol. 195] Supplies furnished the Brimstone Railroad by the Union Sulphur Company consist of steel and ties, switch points and turn outs. Rail is purchased direct by the Brimstone. In large purchases like rails and ties, the Brimstone generally handles the purchase direct. If it wants a keg of nails or something of that kind, instead of sending out and buying them out of town, it buys them from the Union Sulphur Company. On small articles purchased from the Union Sulphur Company, a bill is rendered the Brimstone at the end of each month.

The Union Sulphur Company's locomotive sometimes hauls outbound shipments of general merchandise from the public warehouse for the Brimstone. If there is a car going out to the junction and the Sulphur Company's engine is going that way, it pulls the car out. If the Sulphur Company's engine is going towards Brimstone Junction and there is a car of merchandise coming in and the Sulphur

Company's engine is going towards the warehouse, it will pick up the car and take it to the warehouse. It is a reciprocal arrangement. In other words, inbound shipments consigned to the Union Sulphur Company are sometimes handled by the Sulphur Company's engine, and sometimes by the Brimstone engine. (R. 151-153.) The movement is handled at a great saving of time and other expense.

What is meant by saying that the Brimstone is not performing its full service as a common carrier that it could be required to perform is that it would be a considerable expense and take a great deal of time if the Brimstone is forced to go in and spot the cars for the load. As interpreted by the witness, it is incumbent upon the Brimstone [fol. 196] to spot these cars at every point on the joint tracks within the Sulphur Company's plant. It is considered to be the duty of the Brimstone as a common carrier to make the first spotting.

When some of the workmen employed by the Brimstone Railroad are obtained from the Sulphur Company, the Sulphur Company bills the Brimstone for these employees at the rate paid the employees by the Union Sulphur Company. (R. 154-155.)

When a carload of rice is received from the Huston River and Canal Company warehouse, it moves over the Brimstone to the scale, where it is weighed, and then it is hauled back over the Brimstone and spotted at Brimstone Junction on the tracks of the Southern Pacific.

Trains are operated as occasions demand between the Brimstone connection with the Sulphur Company's plant and Mossville, which is the interchange with the Kansas City Southern. The .81 mile used jointly by the Brimstone and the Southern Pacific (Louisiana Western Railroad) is operated under a verbal lease. The Brimstone places loads on one track and removes the empties from the other and the Southern Pacific does the same thing. (R. 159.) The 2.86 miles a track at the Kansas City Southern connection is operated under a lease. There are no facilities at Brimstone Junction (Louisiana Western Railroad connection) except a track, a telephone for the convenience of the Southern Pacific and the Brimstone, and the inspector's house, which is a small shanty. There are no facili-

ties at Mossville (Kansas City Southern connection) except the tracks.

[fol. 197] On account of the surroundings, the tracks at Brimstone Junction cannot be used by the public for loading or unloading, but at Lockport Junction, cars are often spotted for the unloading of freight.

Other than the employees' store, there is no public other than the Union Sulphur Company which is served by the use of the Union Sulphur Company's tracks running to the warehouse, except when deliveries of carload freight are made to the employees of the Brimstone, and sometimes to farmers who receive materials or household goods. In the event the Brimstone Railroad was eliminated, the Southern Pacific or the Kansas City Southern could not serve the public in the manner served by the Brimstone without a big haul for the public. Sulphur is located on the Southern Pacific tracks about two and one-half miles, and the Kansas City Southern connection is about 6.75 miles from the station at Sulphur Mine. (R. 162.) Deliveries have been made at each of the spur tracks on the Brimstone Railroad to others than the Union Sulphur Company. (R. 163-164.)

The entire Parish of Calcasieu is served by placing cars on the team tracks which have been referred to.

The Brimstone Railroad stops at the Southern Pacific right of way at Brimstone Junction, but the facilities, by reason of the verbal lease between the Brimstone and the Southern Pacific, are controlled by the Brimstone. At the junction with the Kansas City Southern, the Brimstone owns its track and right of way. (R. 165-166.) The tracks to the Southern Pacific interchange and to the Kansas City Southern interchange were both constructed in 1906, and [fol. 198] have been in constant operation since that time. The Brimstone Railroad has continuously operated as a common carrier over its line to Brimstone Junction and to Mossville since it was organized and the lines completed.

The Brimstone has always operated under a joint track agreement to the warehouse of the Union Sulphur Company since the Brimstone was organized. It has operated for many years on the tracks shown on that portion of the map designated as "Sulphur storage bin." These tracks within the Sulphur storage bin vary from time to time by reason of re-location. (R. 166-167.)

The scales of the Brimstone for weighing sulphur were presumably placed at their location on account of certain conditions of the ground. The weights determined at the scales are the weights upon which the Union Sulphur Company invoices of sulphur are sent to its customers. The Sulphur Company does not pay anything to the Brimstone for the weighing of the cars other than the salary of the weigh-master. (R. 169.)

There is no written contract covering the joint operation by the Brimstone Railroad of the tracks of the Union Sulphur Company for which no charge is paid.

The witness could not state how long the 150 gondola cars owned by the Brimstone had been in use. These cars were purchased direct by the Brimstone. (R. 170-171.) The first lot of cars were purchased when the road was incorporated. Other cars have been purchased since then. Some of these cars are hopper bottom cars, and others are side dump cars, all equipped with patent unloading devices that make it more economical for the unloading of sulphur than [fol. 199] their ordinary gondola cars. (R. 171.) The standard rate of mileage is paid on these cars.

Some spur tracks were built for the Highway Department of Louisiana and paid for by the Brimstone. For the first six months of 1921, some fifteen cars of 80,000 pounds capacity of gravel were handled for the Highway Department at these spurs. (R. 173.)

In the territory east of the Sulphur Company's plant adjacent to the line of the Brimstone, there are a number of people served by the Brimstone. The Southern Pacific does not maintain any warehouses for the receipt or distribution of freight along its line paralleling the Brimstone other than at West Lake and at Sulphur, stations about ten miles apart. There is a good road between the Brimstone and the Southern Pacific which crosses the tracks of the Brimstone going north. There is a concrete road south of the Brimstone. (R. 174-177.)

Cross-examination of S. W. Maxwell continued:

The map indicates that there is a roadway or highway which crosses the Brimstone a short distance west of Mossville. This was a projected road, but not laid out. When

this road is completed, the people living north of the Brimstone will have an improved public highway a large part of [fol. 200] the distance to the towns of Sulphur, West Lake, and Lake Charles. If a shipment was to be waybilled from Chicago, Illinois, to the Krause and Mangan warehouse, it would be waybilled to Sulphur Mine. The Kraus and Mangan warehouse is a spur. All points of delivery on the Brimstone except Sulphur Mine are spurs or simply industrial tracks. An outbound shipment from the Kraus and Mangan warehouse destined to Chicago would be waybilled from Sulphur Mine, as Sulphur Mine is the only station on the Brimstone that is designated as a station.

When a shipper desires a car, he orders the car through the agent of the Brimstone, who is located at Sulphur Mine. He gets his bill of lading and obtains all of the necessary information from the same agent. There is no agent at Mossville.

The witness was unable to say whether the six-month period ending June 30, 1921, used as the basis of Exhibit Number Eleven, is a representative period as to the volume of traffic and the earnings of the Brimstone Railroad, or whether during the first six months of 1921 the business of the Brimstone Railroad or the business of the Union Sulphur Company has been not more than fifty per cent of what it was during the first six months of 1920. The business was less during the first six months of 1921 than during the first six months of 1920 (R. 182 183).

The sulphur movement during the year 1920 was large up to the first of October, but there was a slump in the business of all industrial companies which took place in about the month of October, 1920.

Mr. Maxwell, the witness, has been in the employ of the [fol. 201] Union Sulphur Company since 1903, and with the Brimstone Railroad since it was incorporated in 1905. He is familiar with its business and expansion generally as a railroad company.

The right of way was acquired by the Brimstone Railroad by purchase. None of the right of way was expropriated.

The Union Sulphur Company owns the scale which is marked on the map as located on its tracks, on which the cars are placed at the time of loading. This scale is used

for adjusting the load in the car, and not for obtaining the railroad weights. This scale is placed for the convenience of the Sulphur Company, is of smaller capacity than the railroad scale on the Brimstone Railroad, and is not under the supervision of the Western Weighing and Inspection Bureau. It is merely a facility for the loading of the cars up to the marked capacity. The empty car is placed on the Union Sulphur Company's scale, and the sulphur is loaded into it while on the scale to the proper weight, and then removed by the Union Sulphur Company's engine and put on one of the storage bin tracks, from which it is removed at a later date by the Brimstone engine (R. 195-196).

On Exhibit Number Four there is shown an item "additional trackage, 7 miles, $105,000.00," and "shop investment, $50,000.00." Nothing was included for the tracks of the Southern Pacific because the Brimstone operates over these tracks under a contract with that company. The additional seven miles of track which cost $105,000.00 are the tracks of the Union Sulphur Company used jointly by the Brimstone and the Union Sulphur Company.

The tracks which belong to the Union Sulphur Company are listed on Exhibit Number Five. The engines of the [fol. 202] Brimstone have never operated on that portion of the Sulphur Company's track from the oil pumping station up to the batteries as shown on Exhibit Number Three (R. 202). What is known as the Main Line, Brimstone Division, and Lockport Division is merely a name that has been applied to the Union Sulphur Company's tracks for convenience. The main line on what is called the Brimstone end runs from a point near the Houston River and Canal Company north. What is known as the Sulphur Mine-Lockport track runs north from a point marked "connection with the Union Sulphur Company's tracks due west." For convenience, we have designated those under those names, not merely for the purposes of this case. They have been so designated ever since they were constructed.

The letters constituting Exhibit Number Seven with reference to the service performed by the Brimstone Railroad were solicited by the Brimstone (R. 202-208).

All of the figures which are shown on Exhibit Number Eight and Number Four, and other exhibits, were prepared after consultation with the engineering department and

represent the judgment of the officials of the Brimstone as to what these additions and betterments and expenses, as claimed, would be (R. 209-210).

The witness was unable to state what additional trackage would be necessary to handle the tonnage originating from other shippers than the Union Sulphur Company (R. 210-211).

The distance from the point where the Sulphur Company's tracks join the Brimstone out to the west end of the west leg of the wye is approximately a quarter of a mile.

The store run for the employees and the barber shop [fol. 203] and other conveniences for the employees at Sulphur Mine are on land belonging to the Union Sulphur Company.

The witness was unable to state how the item of "accrued depreciation, road," shown on the exhibit as $21,330.80, was arrived at.

The books of the Brimstone Railroad are kept in conformity with the rules established by the Interstate Commerce Commission and are regularly examined by the Commission's representatives.

There was nothing unusual during the six month period covered by Exhibit Number Eleven, showing operating expenses.

The switching facilities at Sabine, Texas, are furnished by the Southern Pacific; the docks and the loading and unloading facilities are all owned by the Union Sulphur Company. The tracks running into the plant are owned by the Southern Pacific.

While the Brimstone Railroad and Canal Company is not a member of the American Railway Association, the rules and regulations of the American Railway Association are observed by the Brimstone (R. 219-220).

Both car mileage and per diem are received on the Brimstone cars.

In 1906 or 1907, the project of building a canal was abandoned by the Brimstone.

The original of the capital stock authorized by the charter was $100,000.00, subdivided into 1,000 shares of a par value of $100.00 each. The charter provided that operations could commence when $5,000.00 was paid in. The capital stock was increased January 22, 1914, to $200,000.00. Prev-

[fol.204] ious to this time, $31,000,00 had been paid in, and the additional stock of $169,000,00 was issued and paid for when issued. It was issued to the Union Sulphur Company. There was at that time a stock dividend. The operations of the Company, the canal project as well as the railroad property were financed by demand notes originally. The demand notes have been liquidated.

On the tracks originally constructed by the Brimstone, one track has been moved from one point to another, and a small spur which was put in was afterwards removed.

Of the sulphur traffic moving over the Brimstone, the largest proportion moves through Sabine, Texas.

The Union Sulphur Company owns its own vessels and are large charterers of vessels. On this portion of traffic, the Brimstone receives divisions from the Southern Pacific.

The Sulphur Company owns certain cars which the Brimstone at one time borrowed and handled traffic on their own rails, but these cars do not go off the Sulphur Company's tracks otherwise. The engines of the Sulphur Company do not operate over the Brimstone Railroad, either to the Kansas City Southern connection or the Southern Pacific. There is no joint use of the tracks of the Brimstone by the Union Sulphur Company. (R. 226.)

Redirect examination of Mr. Maxwell:

Occasionally, a carload of pipe or other material will be handled by the Union Sulphur Company's engine on the Union Sulphur Company's tracks used jointly by the Brimstone and the Union Sulphur Company, but in no case would the Sulphur Company's engine handle a shipment of sulphur or oil. The Brimstone engine handles the oil and the sulphur.

The total side track facilities of the Brimstone are ap- [fol. 205] proximately two miles. The wye is not included in this mileage, but is considered part of the main line. The side track facilities in the vicinity of Sulphur Mine that are owned by the Brimstone are materially less than two miles. (R. 227.)

Traffic consisting of seed rice coming in, fertilizer, machinery, bags. Outgoing rough rice has recently been handled for the Houston River and Canal Company, an irrigation concern furnishing farmers water for the raising

of rice. There is no connection between the Houston River and Canal Company and the Brimstone Railroad and Canal Company.

FRED SHURTS, a witness on behalf of the Brimstone Railroad and Canal Company, respondent, testified substantially as follows:

I am Highway Engineer of Calcasieu Parish, and was instructed by the President of the Police Jury to appear at this hearing. The police jury is the governing body of Calcasieu Parish. I am familiar with the properties of the Brimstone Railroad and Canal Company, having recently gone over them. The Parish of Calcasieu uses material for the building of public roads consisting of steel, cement, brick, sand, washed gravel, and pit run gravel. Since Calcasieu Parish started the construction of improved roads in 1912, we have moved large quantities of material for the construction and maintenance of highways over the Brimstone.

The highways parallel to the Brimstone are the West Lake-Sulphur Road and the Sulphur-Edgerly Road. Those two roads are part of the transcontinental highway which is called the Spanish Trail in our part of the country. [fol. 206] The building of these roads in Calcasieu Parish is under the jurisdiction of the police jury. We have shipped in approximately two thousand cars of material on the Brimstone for the purpose of construction and maintenance from 1912 to 1921. As soon as the east and west road through the State is connected up, the increased traffic will demand improvements on these highways and the rebuilding of certain portions. Where there is now gravel construction, probably concrete or brick will be put in. There is a constant movement of sand and gravel.

Cement, in small quantities, is usually trucked out, but sand and gravel is moved constantly to various points in the parish, some on the Brimstone, and some at other places. The West Lake-Sulphur Road and the Sulphur-Edgerly Road will have to be rebuilt to take care of the increased traffic and will require at least a thousand cars of sand, gravel and cement.

About thirty or forty cars of material for ordinary maintenance of public roads are delivered on the Brimstone each year. This is simply for maintenance purposes. Fifteen cars were delivered in 1921. Deliveries in 1921 fell off because the Parish was involved in tax suits and there were no available funds.

Deliveries of road building material could be made on the Kansas City Southern at Mossville, and on the Southern Pacific at Sulphur station. Deliveries at these points very materially increase the wagon and truck haul. On the West Lake-Sulphur Road haul, the three railroads were used for the delivery of material, that is, the Kansas City Southern, the Southern Pacific, and the Brimstone. The average wagon haul was very close to three-quarters of a [fol. 207] mile on this construction. If we had been unable to use the Brimstone, the average haul would have been increased to a mile and a half. (R. 229-234.)

About three miles of graveled streets have been built by the Parish of Calcasieu in the northern part of the town of Sulphur. The material for this construction was all delivered on the Brimstone. The average wagon haul on this work was about one-half mile. By the use of the Brimstone Railroad, the wagon haul has been reduced and an actual saving made to the Parish on highway work. The average haul of the material used in constructing the graveled streets in Sulphur was practically cut in two by the use of the Brimstone. The operation of the Brimstone Railroad, so far as the Parish of Calcasieu is concerned, is a public convenience and necessity.

Cross-examination:

The two highways referred to are parts of the same highway. There is a concrete highway completed from Sulphur to West Lake and Lake Charles which is in good condition. There are several rice mills at Lake Charles, and Lake Charles is an important rice market. The traffic on the highways is not of such a character as to require excessive maintenance.

The material which is being used in the construction and maintenance of the highways comes from points on the Iron Mountain and some from points on the Rock Island. In every instance, the two-line freight rate is paid on the material that is brought in from points on the Iron Moun-

tain. The saving of the haul by the use of the Brimstone in connection with the supplying of gravel for the improve- [fol. 208] ment of the streets in the town of Sulphur is due to the location of the streets on the north side of the town of Sulphur, the Brimstone being the nearest delivery road. The town of Sulphur extends up to the Brimstone Railroad. The Highway Department of Calcasieu Parish has supervision and control of the streets in the incorporated towns within the Parish, and has built roads at Lake Charles, Vinton, and in Sulphur.

Exhibit Number Twelve is a map of the State of Louisiana published by the Louisiana Public Service Commission. (R. 235-241)

Joseph Lallande, a witness for the Brimstone Railroad and Canal Company, testified substantially as follows:

I live in New Orleans, and occupy the position of General Freight Agent of the Morgan's Louisiana and Texas Railroad and Steamship Company and the Louisiana Western Railroad Company, generally known as the Southern Pacific Lines, and have been connected with the traffic department of that company for about twenty years. The Southern Pacific and the Brimstone join in through rates on various commodities to and from Sulphur Mine. The present divisions between the Southern Pacific Lines and the Brimstone Railroad were fixed by the Railroad Administration, and the figures were conveyed to the officials in charge in a letter signed by W. B. Biddle, at that time Traffic Assistant to the Regional Director, dated St. Louis, March 27, 1919, which letter I would like to read into the record. The letter, addressed to Mr. Gentry Waldo, Traffic Manager, Southern Pacific Lines, Houston, Texas, and Mr. J. F. Odom, Traffic Manager, Kansas City South- [fol. 209] ern Railroad Company, Kansas City, Missouri, was read, as follows:

"Gentlemen:

"Mr. Chambers has approved the following allowances to the Brimstone, effective April 1, 1919:

"Sulphur, when destined Port Arthur, Sabine, or Galveston, Texas, New Orleans, Gretna, or Algiers, Louisiana, for coastwise movement or export, 20 cents per gross ton.

"Sulphur, when destined points other than those shown above, $2\frac{1}{4}$ cents per 100 pounds.

"Fuel oil, 1 cent per 100 pounds.

"Brick, two cents per 100 pounds.

"Cement, $2\frac{1}{2}$ cents per 100 pounds.

"Coal, 2 cents per 100 pounds.

"Lumber, 2 cents per 100 pounds.

"Stone, 2 cents per 100 pounds.

"Logs, destined West Lake, Louisiana, $3.75 per car.

"All other carload traffic, 3 cents per 100 pounds.

"Merchandise, less carloads, 10 cents per 100 pounds.

"Saw dust, Powell Lumber Company Mill, La., to Sulphur Mine, La., $12.50 per car, to divide fifty percent to the Southern Pacific and fifty percent to the Brimstone Railroad and Canal Company.

"Please arrange to publish necessary division sheets, sending two copies to the undersigned for our report, and oblige."

"P. S. Both allowances apply on state and interstate traffic."

The present divisions represent the divisions set forth in [fol. 210] that letter as advanced in accordance with the Commission's decision in Ex Parte 74, with two exceptions. On fuel oil from Shreveport, Louisiana, to Sulphur Mine, Louisiana, the Brimstone is allowed two cents per hundred pounds. On fuel wood, carloads, from Toomy, Louisiana, to Sulphur Mine, the Brimstone is allowed $1\frac{1}{2}$ cents per hundred pounds. (R. 241-243)

The Federal Administration prescribed divisions between the trunk lines and practically all short line connections in the southwest during the period of Federal control. The divisions that were made by the Railroad Administration in some cases are less, and in some cases are slightly more than the revision of divisions made in connection with other short lines. In many cases, the divisions allowed the Brimstone are less than the divisions allowed other short lines. There was no uniformity in the divisions that were established by the Railroad Administration, but they were established particularly for each short line railroad. (R. 245)

The figures which are set forth in the letter from the Railroad Administration, above referred to, were the actual

divisions prescribed by the Railroad Administration, and those figures have since been increased to the extent that the rates were increased in Ex Parte 74. The divisions made with all other connections were increased to the same extent the rates were increased in Ex Parte 74. The advances in the rates were made in accordance with Ex Parte 74, and the advances in the divisions were made correspondingly. (R. 245) The same divisions were established by the Railroad Administration on Southern Pacific traffic and on Kansas City Southern traffic. From [fol. 211] a practical standpoint, the divisions should be the same. It is the only way, in my judgment, that the two lines, the Southern Pacific and the Kansas City Southern, can both participate in the traffic to and from points on the Brimstone Railroad and Canal Company.

While the distance on the map and the actual distance from these points of origin to the junction with the Kansas City Southern is somewhat in excess of the distance to the connection with the Southern Pacific lines, it is impossible, in my judgment, to determine precisely, or even approximately, the difference in the cost of transporting this freight to the junction with the Kansas City Southern and the junction with the Southern Pacific; and, in order to have a free flow of traffic via both lines, I consider it necessary that the divisions be the same. (R. 246)

A great many of the expenses in connection with the handling of traffic are fixed. The train crews work so many hours a day, and the steam is up all the time on the engine, and there are many expenses in connection with the handling of the traffic that are constant and continuous, making it extremely difficult, with any degree of definiteness, to determine the difference in the cost. In the event the Commission should establish a nominal switching charge for deliveries to the Southern Pacific and a road allowance on deliveries to the Kansas City Southern, it would, in my opinion, practically close the route in connection with the Southern Pacific.

The Railroad Administration invariably made the divisions uniform by the different junctions of the different short line railroads. The committee dealing with the short line divisions in the Southwest was composed of experienced [fol. 212] railroad men who were not directly connected with the trunk lines or the short lines involved. Mr.

Biddle, who wrote the letter to the Kansas City Southern, the Southern Pacific, and the Brimstone naming the divisions fixed during Federal control, had never been connected with any of the railroads involved. Mr. Chambers, who approved the basis of divisions, was vice president in charge of the traffic of the Santa Fe. No officer of the Southern Pacific participated in the negotiations or discussions which led up to the fixing of the divisions received by the Brimstone by the Railroad Administration. (R. 248-249)

It is the custom throughout the Southwest territory generally for the trunk line railroads to weigh all carload traffic, in order to ascertain the weights for assessing freight rates. The service is performed throughout Louisiana on the Southern Pacific Lines where track scales are available. The tariffs provide that where the cars are weighed for the purpose of assessing freight charges, no charge is made for the service. Wherever it is practical, cars are all light weighed, and no charge is made for the service of weighing. For the purpose of ascertaining the light weight of the car, carrier railroad owned by an industry in making divi- without charge for the service (R. 250-251).

Cross-examination:

The basis used by the Railroad Administration in arriving at the divisions allowed the Brimstone was as follows:

"The basis in question was discussed in detail with the traffic manager of the Brimstone Railroad and Canal Company, who approved the basis which was finally authorized. In working out these divisions, we took into account their [fol. 213] mileage, operating conditions, revenues, etc."

I think these divisions are fair division. We have made some comparisons with the divisions since the divisions were received. We do not make divisions with our connecting lines on the basis of their revenues. Mr. Stanage's committee (Railroad Administration) did take into consideration the revenues of the Brimstone. Our attitude is that influences that govern the making of our divisions with our connections may not in all cases be the same influences that governed the committee of the Railroad Administration in making divisions between two railroads. The rail-

road pursues the same policy in dealing with the common carrier railroad owned by and industry in making divisions, as the Interstate Commerce Commission. In making divisions with industrial railroads, we do not ignore the question whether the divisions so allowed give them a rich return in revenue. I do not know what dividends were paid by the Brimstone Railroad. We like to see our connections prosper and our shippers prosper. We did not make the present divisions with the Brimstone Railroad and Canal Company, but we have endorsed them and are here defending them, because they are fair and reasonable, in our judgment, and the fact that the Brimstone Railroad has been prosperous financially would not change my view (R. 252-255).

By Mr. La Roe:

Q. Suppose that the reports of the Brimstone Railroad Company on file with the Interstate Commerce Commission show that in the year 1915 it declared a dividend of 100 per cent on its capital stock; that in the year 1916 it had a corporate surplus of $65,000, as compared with $120,000 the [fol. 214] previous year; that in 1916, the year ended December 31st, it declared a dividend of 60 per cent, and yet had a corporate surplus of $70,000; that in 1918 it declared a dividend of 40 per cent and had a corporate surplus of $86,000; that at the end of 1919 that corporate surplus had risen to $125,000; and that at the end of 1920—December 31st of last year—it had risen to $165,000 and is now close to $200,000——

Mr. Barrow (Interposing:) Why did you leave out 1917?

Mr. La Roe: I did not leave out anything.

Mr. Kilbreth: I think you did.

Mr. Wood: I think he has enough in the question.

By Mr. La Roe:

Q. If those facts should be laid before you, would you change, in any respect whatsoever, your view towards the fairness and propriety and equitableness of those divisions?

A. Those facts, if laid before us, might be the basis of negotiations with the Brimstone Company for a different basis of divisions; but we would have to take into considera-

tion the competitive conditions and the divisions allowed them by other connections.

Q. Have you, as a matter of fact, taken that element, into consideration in determining these present divisions?

A. No, sir.

Q. You have not?

A. No, sir.

Q. That has been ignored?

A. We have not.

[fol. 215] Mr. La Roe: Please note that I said, "That has been ignored," and he said "We have not."

By Mr. La Roe:

Q. The fact is that you have entirely ignored that consideration?

A. We have not taken those facts into consideration any more than in making a division with the Illinois Central at New Orleans or the L. & N. Railroad at New Orleans, when we find it necessary to make one, we take into consideration their earnings at the end of a given period.

[fol. 216] In the testimony in the trial of a case some time ago, involving rates on sulphur, statements were made by some of the witnesses about production of sulphur at various points in the United States, of which I was not aware, and I do not know whether that sulphur originates on short lines or not. I don't know of any other railroad in the United States other than the Brimstone Railroad that holds itself out as a common carrier that handles a tonnage of sulphur at all similar to that handled by the Brimstone. The bulk of the traffic handled by the Brimstone consists of outbound sulphur and inbound fuel oil. I know of no other short line railroad in the United States where the same situation exists. Divisions allowed the Brimstone have been predicated in part upon the fact that they are the same divisions that are accorded generally to other short lines of railroad. The division of 2¼ cents on all-rail sulphur, which is now three cents, is not out of line with the figures allowed short lines on various commodities, such as pipe, fertilizer, building material, and other commodities that move in carload lots (R. 260-261).

The division of three cents which is allowed the Brimstone on all-rail sulphur is defended on the grounds that

it is not out of line and not out of harmony with divisions allowed other short line connections throughout this Southwestern territory. Three cents a hundred pounds on a carload of sulphur averaging 80,000 pounds would amount to $24.00 per car. The Brimstone does not get $24.00 per car on every car of sulphur that they haul. The bulk of the traffic goes to Sabine, on which the Brimstone's proportion is 27 cents per gross ton. On the all-rail sulphur, the Brimstone gets $24.00 per car. I regard this $24.00 as [fol. 217] a reasonable division for that service, taken in connection with the division generally allowed that line on other traffic (R. 262-263).

The service rendered by the Brimstone on fuel oil is somewhat similar to that rendered on sulphur moving in connection with the Southern Pacific. The division on fuel oil is 1.3 cents per hundred pounds, or ten or eleven dollars per car.

The sulphur rates apply to more distant territory, and the earnings are greater than on oil, which usually moves a short distance on low rates. On the sulphur, the movement of which by the Southern Pacific lines is similar to the movement on oil, that is, between Sulphur Mine, La., and Sabine, Texas, the Brimstone receives 27 cents per gross ton, or between ten and twelve dollars per car, about the same as is received on oil.

If financial condition and earnings of the Brimstone Railroad were an important factor, we would have to have a revolving set of divisions. We would have to change it at the end of every three months, six months, or one year, according to whether the road's dividends varied.

The divisions allowed the Brimstone were not determined on the actual cost of handling traffic (R. 265).

As to the equality of the divisions between the Kansas City Southern and the Southern Pacific, while the haul is about five miles longer to the Kansas City Southern interchange than to the Southern Pacific interchange, the division should be the same for practical reasons, and for the further reason that it is difficult, if not impossible, to determine accurately or approximately the difference in cost of handling the traffic to the connection with the Southern [fol. 218] Pacific and to the connection with the Kansas City Southern under the method of handling as described.

It may possibly cost more, but I do not believe that a capable and experienced operating man could determine just how much more (R. 267).

The remainder of the testimony of Mr. Lallande dealt with the question of equalizing the divisions via the Kansas City Southern connection and the Southern Pacific connection, irrespective of the distance hauled.

Practically the same divisions were in effect on the Brimstone from the time they were ori*i*inally allowed by the Southern Pacific and the Kansas City Southern up to the time they were changed by the Railroad Administration. These divisions varied, depending on the point to which the traffic was destined.

Q. Then, I will ask you if you can submit for this record a copy of the division sheet that was in effect at the time Federal control commenced, showing the divisions which were in effect up to the time the change was made by the Railroad Administration.

A. I do not see any *h*earing that that divisions sheet would have on this case.

Mr. Wood: Mr. Examiner, I am informed that those old division sheets are in the record, if the answer to the questionaire is regarded as part of the record.

Mr. Hershey: If that is true, Mr. Wood, it is all right.

Mr. LaRoe: I do not think it is.

Mr. Barrow: Oh yes; all the division sheets.

Mr. LaRoe: The old division sheets?

Mr. Barrow: Yes.

[fol. 219] Mr. Wood: If it is not, there is no objection to furnishing it, so far as that is concerned.

The divisions allowed the Brimstone by the Railroad Administration were somewhat lower on some commodities and higher on other commodities than were previously in effect. Eliminating the 25 per cent increase allowed under General Order No. 28 of the Railroad Administration, the divisions allowed the Brimstone were substantially less on sulphur and on oil than were allowed prior to the time the divisions were prescribed by the Railroad Administration (R. 268-270). Our divisions on sulphur varied from one cent to four cents per hundred pounds, whereas under the

administration's figures a division was set at one figure on all interstate and state traffic, except sulphur destined to the ports for export or coastwise movement (R. 271).

The Railroad Administration did not take over the Brimstone Railroad. It was the policy of the Railroad Administration in fixing divisions with short lines to take into consideration the advances that had been made in freight rates. The Railroad Administration did not take the di- [fol. 220] visions that were in effect and order them increased as the rates had been increased.

We allow the Louisiana Pacific the same divisions at Lake Charles as it receives from the Gulf Coast Lines at Fulton, and from the Kansas City Southern at DeRidder, irrespective of the haul, except on lumber. Each short line railroad where the railroad and the lumber mill are owned by the same people—its affairs would have to be investigated and contrasted with those of the Brimstone Railroad and Canal Company before the differences as existing could be determined. There has been no investigation to determine the differences existing between so-called lumber roads on the one hand and the Brimstone Railroad on the other.

The divisions allowed the Brimstone have always been the same from the Kansas City Southern and the Southern Pacific ever since the divisions were first made. This was necessary in order to permit a free flow of traffic via the two junctions. The rates are the same generally via the two routes (R. 274).

The Brimstone Railroad first connected with the Southern Pacific. When this connection was first made, no divisions were allowed the Brimstone. The Southern Pacific first agreed to allow the Brimstone Railroad and Canal Company divisions in the latter part of 1906, and the divisions were made effective in the beginning of 1907. Divisions were then being allowed the Brimstone by the Kansas City Southern. The Brimstone first connected with the Southern Pacific in the beginning of 1906 and effected a connection with the Kansas City Southern about the same time.

It is the custom of the short lines to connect with trunk lines participating in the lumber business, for the short [fol. 221] lines invariably send the business via the junction by which they get the greatest division. The effect has

been to deny the line that probably was the original line built there, close to the industry, from participation in the lumber business in that industry (R. 276). Where a lumber mill would be located on a short line contiguous to the Southern Pacific, as an illustration, the business would be sent via a junction connecting with another trunk line, giving the short line a longer haul; but another saw mill located on that particular line would send its business to the Southern Pacific to obtain the long haul. Thus, where there were a large number of saw mills located throughout the territory on the various short lines, the traffic would even itself up. But there is no compensating feature on the Brimstone, as there are no other producing sulphur mines in Louisiana except those located on the Brimstone (R. 277).

The Southern Pacific did not at any time perform any service within the plant. I consider the service performed by the Brimstone on the joint tracks of the Union Sulphur Company as a transportation service, as distinguished from plant facility service, because it is a service that our railroad (Southern Pacific) performs for various industries located on its lines.

The Brimstone is performing a service on all of this traffic which would have to be performed by the Southern Pacific if the Brimstone did not perform it, for which the Southern Pacific would get the entire rate. (R. 279.)

We regard the spotting of cars at a location available and designated by the consignee as a transportation service. If it would be necessary to switch the cars around within the plant after they have been spotted once by the line [fol. 222] performing the rail haul, then I would understand that would be a plant facility. We would spot the cars once. (R. 280.)

Mr. H. A. Weaver, General Freight Agent of the Kansas City Southern Railway Company, testified substantially as follows:

I have prepared an exhibit showing the divisions allowed the Brimstone by the Kansas City Southern on sulphur, as well as other divisions allowed the Brimstone (Weaver's Exhibit No. 1?). The divisions allowed other short lines are the same as or higher, in some instances, than the

divisions allowed the Brimstone. Sulphur and fuel oil are the principal commodities moved in and out of the Union Sulphur Company over the Brimstone Railroad, and only a limited movement has moved through the Kansas City Southern connections. (R. 283-285.)

Exhibit No. 14 is a comparision of the divisions allowed the Brimstone Railroad and Canal Company with divisions allowed other short lines in the Southwestern territory, some of which are connected with the Kansas City Southern. The divisions applying on fuel oil and sulphur allowed the Brimstone by the Kansas City Southern were the divisions which were set by the Traffic Director of the Railroad Administration as being reasonable divisions and proper allowances to the Brimstone Railroad and Canal Company. We were instructed by the Railroad Administration to put these divisions into effect. The divisions which were prescribed by the Railroad Administration have been increased 35 per cent in accordance with Ex Parte 74.

No officials of the Kansas City Southern were on the committee which fixed the divisions for the Brimstone [fol. 223] Railroad which were established by the Railroad Administration.

A comparison of the divisions with other lines, I think, justifies the allowances to the Brimstone Railroad and Canal Company. Our divisions on sulphur delivered us by the Brimstone Railroad and Canal Company are about the same as are allowed the short line connections by the Kansas City Southern on lumber for a similar distance. Under the Tap Line decision, the division allowed by the Interstate Commerce Commission on lumber for distances between six and ten miles is three cents per hundred pounds, which is the same division we allow the Brimstone on sulphur.

Cross-examination:

The divisions allowed the Brimstone by the Kansas City Southern should be larger than the divisions allowed the Brimstone by the Southern Pacific, because of the greater service performed by the Brimstone in reaching the Kansas City Southern connection. I regard it as a transportation service for the Brimstone Railroad and Canal Com-

pany to go into the tracks of the Union Sulphur Company and place the empty and the loaded cars, and take out the loaded cars, the same as any other transportation company might.

When the Brimstone Railroad weighs the loaded cars, I would say they might be performing a transportation service. When the Brimstone takes the oil from Mossville (Kansas City Southern interchange) and hauls it over their line, and thence a mile over the plant track, and delivers the oil at the usual place of delivery, I would think it was a railroad service, that is, the initial placing of the car, or the spotting for the first time of the car, within the plant. [fol. 224] Referring to Exhibit No. 13, showing list of short line railroads and the divisions received by them from various trunk lines, the witness stated he was not familiar with the conditions on any of these lines. He could not state the nature of the commodities shipped over the roads, or the financial condition of any of the railroads shown on the statement, Exhibit No. 13. The divisions stated on the exhibit are representative divisions allowed other short lines throughout the Southwest. The exhibit was offered as representing the divisions which are in effect with the Brimstone Railroad and Canal Company and with other short lines in the Southwestern territory. The divisions which were in effect prior to the time they were fixed by the Railroad Administration were both increased and reduced by the Railroad Administration.

I think our present divisions on sulphur are all right, considering our own delivery (Kansas City Southern delivery). I do not consider that they are all right compared with the delivery to the Southern Pacific. (R. 300) A carload of sulphur is probably more valuable than a carload of lumber.

"Q. (By Mr. Hershey) What is the rate on lumber to Chicago, from your district, and on sulphur?

A. I used to know, but I don't remember.

Q. Are not the rates within about a cent or two cents of being the same?

A. I would not be surprised." (R. 301.)

I couldn't give you the amount of business that we handled for any particular period, other than possibly the

last three months. During the month of July we handled approximately 60 cars, or about two cars per day. In August we had about 75 cars. In September, we had about [fol. 225] 150 cars. This was fuel oil from the Caddo District of Louisiana and was shipped one or two cars at a time.

I think the Kansas City Southern ought to be able to pay the Brimstone Railroad a division sufficiently greater than that paid by the Southern Pacific to at least compensate the Brimstone Railroad for the additional service from its plant to our connection at Mossville. I don't know what the cost of handling the traffic is to the Brimstone.

Redirect examination:

It has been the custom of trunk lines and their connections in the past to establish divisions upon some agreed basis, except in those instances where divisions were prescribed by the Commission, and that plan was applied in establishing the divisions originally with the Brimstone. Except during the period of Federal control, the carriers have been at liberty to change the divisions as they might see fit. We did not increase the divisions to the Brimstone for their service to our line, because the chances are the Southern Pacific would have correspondingly increased the divisions for their haul to the Bristone, and that would not have helped our situation. I would be perfectly willing at any time to establish the division which would allow a reasonable revenue for the increased service. Our allowance to the Neame, Carson, and Southern, which connects with the Kansas City Southern, on fuel oil on that line would be 4 cents per hundred pounds. (R. 205-207) The allowance on fuel oil that move from the Mansfield Railway and Transportation Company would be 5.4 cents per hundred pounds. On shipments of oil that moved from the Gulf and Sabine River Railroad, our allowance on fuel oil would be 6.8 cents per hundred pounds. In cases where [fol. 226] there are no through rate established to points on the Brimstone and connections of the trunk lines, the divisions of the local rates would apply. If this division was based on Mossville (Kansas City Southern interchange) it would increase the division. The local rate of

any commodity that moves to either the Southern Pacific connection or to the Kansas City Southern connection would result in a higher rate than the through rates in effect, based upon the combination of locals, and the Brimstone would in each case get its local rate up to the connection point. The Brimstone would receive on traffic that moved under the combination of locals a higher rate than the division it receives from its connections. (R. 308.)

Recross examination:

Exhibit No. 14 was submitted merely to show the divisions which are in effect with other short lines. I don't know anything about the financial condition of the Gulf and Sabine River or the nature of its traffic, or whether it handles sulphur or fuel oil.

The Neame, Carson, and Southern Railway, which connects with the Kansas City Southern, is owned by a lumber company, and its traffic consists largely of lumber. I do not know anything about its financial condition. There is not a balanced movement of inbound and outbound commodities. The traffic consists of about five cars a day, outbound, of lumber, with but little inbound tonnage. (R. 312.)

The short line railroads shown on Exhibits 13 and 14 operate in the same general territory as the Brimstone. They are about the same length. So far as the character of their product is concerned, the business that originates on their line, there is no similarity between these lines and [fol. 227] the Brimstone Railroad.

The Mansfield Railway and Transportation Company connects with the Kansas City Southern. It is about eight miles long and is located about 45 miles south of Shreveport. The volume of its inbound and outbound tonnage is about the same as the traffic of the Neame, Carson, and Southern. I don't know anything about the volume of tonnage that this road handles.

I am submitting this statement (Exhibit 14) as tending to show that the divisions allowed the Brimstone Railroad and Canal Company compare favorably with the divisions allowed other lines for the same service on other commodities. I do not mean to say that they handle oil or sulphur, or the same amount of fuel oil. The intent of my comparisons is that the general divisions on all of the

commodities allowed the other short lines throughout the Southwest compare favorably with the divisions allowed the Brimstone Railroad and Canal Company. (R. 312-318) The exhibit was filed for comparative purposes only. (R. 319.)

Referring to Exhibit No. 13, one of its purposes is to show the general level of its divisions allowed short lines in the Southwest territory.

The division allowed on lumber to the Tennessee Valley and Southern Railroad is 6.7 cents per hundred pounds for a distance operated of six miles, as compared with the division allowed the Brimstone on sulphur of 3 cents per hundred pounds on all rail traffic.

On all divisions, the allowance to the originating line for a similar service is very much less than the allowance to the destination line for the same service. (R. 322 [fol. 228] The Trinity Valley and Southern Railway, the Gulf and Sabine Railroad, the Moscow, Camden and St. Augustine Railway, the Caro Northern Railway, the Mansfield Railroad and Transportation Company, the Neame, Carson, and Southern Railroad, the Red River and Gulf Railroad, are all short lines on which are located log saw mills, the line being owned by the same interests that own the lumber manufacturing company.

It is customary in the Southwest, to some extent, for trunk lines to accord divisions to short line connections, disregarding distance within a reasonable limit, when one trunk line is competing with another. I do not know that it is a hard and fast rule that this should be done.

The remainder of Mr. Weaver's testimony related entirely to the question of whether the divisions allowed the Brimstone by the Kansas City Southern and the Southern Pacific should be equalized, or whether the Kansas City Southern should allow the Brimstone a higher division than the Southern Pacific because of the greater haul over the Brimstone from Sulphur Mine to the Kansas City Southern interchange than from Sulphur Mine to the Southern Pacific interchange. Other than the fact that the haul to the Southern Pacific is less than the haul to the Kansas City Southern, there is no reason why the divisions accorded the Brimstone by the Kansas City Southern should be higher than the divisions accorded by the Southern

Pacific to the Brimstone. The divisions were originally established by the Kansas City Southern, and the divisions as initially established have been increased 25 per cent, following General Order No. 28 of the Railroad Administration, and also have been increased following Ex Parte 74.
[fol. 229] The Southern Pacific met the divisions established by the Kansas City Southern prior to the connection of the Brimstone Railroad and Canal Company with the Kansas City Southern. Any sulphur handled by the Kansas City Southern was delivered to that line by the Southern Pacific Company at Lake Charles. The division which we had to accord to the Southern Pacific were considerably in excess of the figures that were subsequently accorded to the Brimstone Railroad and Canal Company for their service to Lockport Junction. The haul of the Southern Pacific from Brimstone Junction to Lake Charles is about ten or twelve miles, a little longer than the haul of the Brimstone to Lockport Junction. The division accorded the Southern Pacific was approximately ten cents per hundred pounds. We had to give that division to the Southern Pacific before we had the connection with the Brimstone. I do not recollect what the first divisions allowed the Brimstone were.

Mr. V. V. Kirkpatrick, Valuation Engineer of the Kansas City Southern Railway Company, employed by the Brimstone to make an inspection and valuation of its properties in Louisiana, testified substantially as follows:

On the 14th and 15th of this month (October, 1921,) I went over the properties of the Brimstone, took a copy of the Bureau of Valuation's inventory notes, and made a summary of those notes, and to those applied the prices shown at a cost of reproduction now. The quantities were as of June 30, 1918, and the valuation was made on the properties finally as of December 31, 1920. June 30, 1918, was used as a basis for the inventory, as that was the valuation date as fixed by the Bureau of Valuation of the Interstate Commerce Commission.
[fol. 230] For two years, approximately, I have been the valuation engineer for the Kansas City Southern and its subsidiaries, and for eighteen months preceding that time I

was valuation engineer on the small roads that had been put under the management of the Kansas City Southern during Federal control. These roads were the Midland Valley, the Kansas City, Mexico and Orient, the Missouri and North Arkansas, and, for a short while, the Vicksburg, Shreveport and Pacific. For a short period, I was connected with the valuation of the Houston, East and West Texas (R. 338).

Using the quantities as of June 30, 1918, I applied the price levels obtaining in 1914, because that was the year adopted by the Bureau of Valuation in the valuation of all carrier property. Exhibit No. 18 includes the entire physical properties of the Brimstone Railroad and Canal Company as found on June 30, 1918, with the exception of sixteen miles of canal right-of-way; and there is nothing included in this exhibit covering working capital for material and supplies. I have prepared an exhibit showing the cost of reproduction new as of December 31, 1920, which was filed as Exhibit No. 17. I start with the cost of reproduction new as of June 30, 1918. To that I have added the amount of working capital, material, and supplies, and the cost of 16 miles of right of way for a canal. That totals $316,297.00, for the cost of reproduction new as of June 30, 1918, plus working capital, materials and supplies, and 16 miles of right of way for a canal. To that figure I have added the additions and betterments from June 30, 1918, to December 31, 1920, in the amount of $209,475.00. That totals $525,772.00, which is the total cost of reproduction new as of December 31, 1920, based on the 1914 price level, [fol. 231] except that the additions and betterments are put in there at the cost, rather than at any increased figure.

To the $525,772.00, I have added the approximate increase to the quantities that were found in the property on June 30, 1918, to cover the cost of what the reproduction figure would be in the latter part of 1920. That makes a grand total of $811,585.00, cost of reproduction new as of December 31, 1920, on the price level as of that date, or approximate date.

Deducting the sum of $13,239.00, covering the 16 miles of right-of-way for the canal, the cost of reproduction new of the railroad company's property proper as of December 31, 1920, would be $798,000.00 I arrived at the 110 per cent

as the increase in the cost as of December 31, 1920 over 1914 from a study made as to the increase in the cost of materials and labor in 1920 over 1914 (R. 336 342).

Cross examination:

The figure of $209,880,00 included for additions and betterments was expended principally for equipment—cars. There were 103 cars on the property on June 30, 1918, and the difference between that and the 156 (owned on December 31, 1920,) were purchased after June 30, 1918.

The 110 per cent of all accounts included in the $266,752 00 shown on Exhibit No. 17 except account number two means that the land for transportation purposes was excepted. The land will be valued on the prices that obtained in 1914, and there was not any increase in the value of that land between 1918 and 1920.

The Bureau of Valuation has not submitted to the Brimstone Railroad and Canal Company any tentative figures [fol. 232] of its valuation. The quantities used in inventorying the properties were obtained from carbon copies of the Bureau of Valuation notes which they turned over to the Brimstone.

The amount included for working capital was cash on hand (R. 342 343).

There were 30 or 40 cars purchased in the latter part of 1919 that cost $2,801.00, laid down at Sulphur Mine. There was another purchase, but I do know the price paid. Besides, the item of $209,475.00 shown as additions and betterments on Exhibit 16 from June 30, 1918, to December 31, 1920, did not consist entirely of additions and betterments. They relaid a mile or possibly a little more than a mile of 60 pound rail with 90 pound rail.

I would say that the cost of reproducing the property at $800,000.00 is about the cost it would be put to in its reproduction (R. 344).

The item, "station and office buildings, $4,650.00," shown on the exhibit is for facilities owned by the Brimstone Railroad. Included in that amount is $4,100.00 for the cost of scales, which is a proper charge to station and office room, and the Bureau sets the figure of $300.00 as the value of the furniture in the office, as that part belonging to the Brimstone Railroad. I took the figures of the Bureau of

Valuation for the quantities and walked over the railroad to view the property.

Included in the estimate of cost of reproduction new as of December 31, 1920, are about 9.5 miles of main line, and the side mileage belonging to the Brimstone Company, added to which would be the cars. Everything is included in the estimated cost of reproduction new of $811,587.00.

The country around Sulphur Mine is generally low, flat, [fol. 233] level country, a coastal plain. There are no unusual grades or unusual obstructions from the physical point of view. The cost per mile of reproducing the road is around $80,000.00, which includes road and equipment and all other things connected with the railroad (R. 347).

Mr. A. R. Fallon, Assistant Traffic Manager, Brimstone Railroad and Canal Company, testified substantially as follows:

I have been connected with the Brimstone Railroad and Canal Company for a period of about twelve years, during which time I have occupied the position of assistant traffic manager. The duties of that position require me to handle the tariffs and the publication of tariffs of the Brimstone Railroad and Canal Company. The Brimstone files tariffs with the Interstate Commerce Commission. Exhibit No. 20 was offered in evidence. This exhibit is the tariff index of the Brimstone Railroad and Canal Company issued April 25, 1921, I. C. C. No. 24. The tariff shows a list of the stations located on the line of the Brimstone and also shows the tariffs that are published by the Brimstone Railroad and Canal Company, and all of the tariffs in which the Brimstone Railroad and Canal Company concurs.

The Brimstone publishes a local tariff that applies between points on its line on local traffic, known as Brimstone Railroad and Canal Company Local and Proportional Freight Tariff No. 519, I. C. C. No. 22. This tariff was filed as Exhibit No. 21.

The Brimstone complies with all the requirements of the Interstate Commerce Commission with respect to the publication and filing of its tariffs, and maintains a complete [fol. 234] file of all the tariffs which it publishes and to

which it is a party, at Sulphur Mine, La., for public inspection.

I have direct charge of the handling of the divisions between the Brimstone Railroad and Canal Company and its trunk line connections. The divisions that are in effect today on the Brimstone Railroad and Canal Company are the divisions that were prescribed by the Federal Government and the Railroad Administration, plus the increases under Ex Parte No. 74. Before prescribing those divisions, the United States Railroad Administration conducted an investigation into the propriety of the divisions that were in effect at the time the government took over the railroads in the fall of 1918 (R. 352-355).

During the fall of 1918, the Regional Director of the Southwestern Region of the United States Railroad Administration, located at St. Louis, sent to the Brimstone Railroad and Canal Company a questionnaire to be filled out regarding the relations then existing between our road and our federally controlled connections. In this questionnaire, they undertook to develop, first, the general character of the road. That is to say, they requested the mileage and equipment, and a map showing the length of the road. Second, they required information with respect to the divisions then existing on the traffic interchanged with our federally controlled connections. They went into the question of car supply and routing, the character of the traffic handled, and other conditions. This questionnaire was filled out and returned to the Southwestern Regional Director's office in November, 1918. Subsequently the Southwestern Regional Director, during the investigation called for additional information that had not been fully [fol. 235] covered by them in their questionnaire, and suggested a conference for the purpose of obtaining all the data that they required in their investigation, of our divisional arrangements.

This conference, at their suggestion, was arranged at St. Louis on February 26, 1919. I represented the Brimstone Railroad and Canal Company at that conference. Mr. W. B. Biddle, traffic assistant to the Southwestern Regional Director, and Mr. B. H. Stanage, of Mr. Biddle's staff, who was in charge of divisions paid to short line railroads in the Southwestern region, represented the United States

Railroad Administration. Copies of our divisional arrangements, interline settlements, and facts regarding the in and outbound traffic, were submitted for the consideration of the United States Railroad Administration at that time.

In April of 1919, I think it was April 9—we were informed by Mr. Biddle's office that the Director of Traffic's office, of the United States Railroad Administration, in Washington, had approved a divisional basis for our road, on both state and interstate traffic.

"Q. Do you know with what railroad Mr. Stanage was connected prior to the Federal control of railroads?

A. I think it was developed here that he was with the St. Louis and San Francisco."

Neither Mr. Biddle nor Mr. Stanage was connected prior to Federal control, at any time with either the Kansas City Southern or the Southern Pacific lines, to my knowledge.

I received a letter from Mr. H. M. Adams, of the United States Railroad Administration, advising me as to what the divisions would be. These divisions had been approved by Mr. Chambers, Director of Traffic of the United States [fol. 236] Railroad Administration.

The division sheets that were published in compliance with the Railroad Administration's decision, and the letter referred to were filed in evidence as Exhibit No. 22.

Mr. H. M. Adams, who signed the letter to Mr. Fallon, succeeded Mr. Biddle as the Traffic Assistant to the Regional Director of the Southwestern Region. Mr. Adams, to my knowledge, was never connected with the Kansas City Southern or the Southern Pacific lines prior to the Administration. The letter dated April 9, 1919, written by Mr. Adams to me (Exhibit No. 22) was written subsequent to the instructions having reached the Southern Pacific and the Kansas City Southern to correct our divisional basis. In other words, the instructions through the Federally controlled lines connecting with the Brimstone Railroad were received under date of March 27, and these divisions were ordered to become effective April 1. We received our advice first from the Railroad Administration under date of April 9 (1919).

The divisions are the same from the Kansas City Southern and from the Southern Pacific. The Brimstone Railroad and Canal Company at all times since the beginning of its operation in 1906 complied with all the tariff publication requirements of the Interstate Commerce Commission with respect to publishing and filing of its tariffs. It has received divisions from its trunk line connections the Kansas City Southern and the Southern Pacific since some time during 1906 continuously down to the present date.

Exhibit No. 23 is a statement filed in evidence showing the divisions allowed other short lines in the same general [fol. 237] territory as the Brimstone Railroad and Canal Company.

More service is performed by the Brimstone in the handling of the box car movement of sulphur than there is in the tidewater movement to Sabine. Sulphur for Sabine moves generally in trainload lots and does not require the same service, with respect to the weighing, that is required in the box car movement. The cars going to Sabine are employed constantly in the sulphur service, and the weighing operations consist of the loaded weight only, whereas the box car movement necessitates the weighing of the box car light before it is loaded. The coastwise and export movement is the major portion of the sulphur movement at the sulphur mine. The all rail movement, which is the box car movement, is comparatively little, when you consider the total sulphur movement from Sulphur Mine; and the box car movement in no case moves in trainload lots. Sulphur to Sabine moves on an export and coastwise rate, consideration being given to that fact, and the rate is on a lower level than would apply on a local movement.

I have made very little investigation of the conditions surrounding any of the roads shown on Exhibit No. 23. The information is simply offered in line with the Commission's request that it be advised as to the prevailing divisions now in force with other short lines in the same rate district.

We pay per diem to the trunk line connections for all the foreign cars delivered to us, loaded or light, during the entire period that they are on the Brimstone rails. We receive from the trunk lines, in settlement of our equipment, while on their rails, a mileage, which is now on the basis of one and one half cents per mile.

[fol. 238] The reason we do not interchange our 136 cars with the trunk line connections on the usual per diem interchange arrangement is our desire to avoid those cars getting out of the Sulphur Mine-Sabine traffic service. The gondola cars (of the Brimstone Railroad) are dump bottom cars, and if we were to interchange them with our trunk line connections on a regular per diem arrangement basis, those cars would be subject to loading to all parts of the United States, as equipment of any ordinary trunk line. The trunk lines are not permitted to settle on a per diem basis with us unless we are members of the per diem rules agreement of the American Railway Association. We are not a party to that agreement. In every case where the gondola cars are in service, there is an empty mileage equal to the loaded mileage. That is also true of the tank car situation (R. 365-367).

With respect to the commodity of sulphur, I dare say that 80 per cent of that sulphur business is handled and invoiced on railroad weights, and that 20 per cent that I would exclude from that might possibly be sulphur that would be handled ex vessels. Ordinarily, the railroad weight of the originating line is accepted as the basis for settlement between the shipper and the receiver, as well as establishing the basis for the freight charge. In handling sulphur shipments from the ships to the railroads at Eastern ports, for example, Boston, New York, and Norfolk, the railroad companies weigh the shipments of sulphur there and furnish the Union Sulphur Company with the scale weights, and these scale weights are used as the basis for their invoices. No charge is made for that service (R. 368-369).

[fol. 239] Cross-examination:

I am assistant traffic manager of both the Union Sulphur Company and the Brimstone Railroad and Canal Company. No computation has been made of my time devoted to each service. My salary is paid by the Brimstone Railroad and Canal Company. The Union Sulphur Company pays nothing.

The division of 27 cents which we get on sulphur moving to the Gulf does not equal our local rate on sulphur for that

haul. Page two, Local Tariff, I. C. C. No. 22 (Brimstone Railroad and Canal tariff) shows a rate of 27 cents for the movement from Sulphur Mine to Brimstone on traffic that is going to be exported. That is in the nature of a proportional rate, and we get our full rate as our division. The service is the same for that movement (traffic that is going to be exported) as it would be, except for the weighing, on through carload business moving all rail.

There has never been a local movement of sulphur from Sulphur Mine to Brimstone Junction. The local rate of 5½ cents per hundred pounds on the Brimstone is a paper rate. A large part of the traffic is routed over the Southern Pacific for the all rail movement. As a natural result, a good deal of it goes into the Southeast, and over roads that the Southern Pacific would form the logical and natural route for. The Kansas City Southern probably enjoys the major portion of the traffic to the upper western states (R. 368-372).

The rate of 27 cents per ton on sulphur from Brimstone Junction to Sulphur Mine, La., when for export or coastwise traffic, applies "between." The tariff was constructed that way. There is no movement from Brimstone Junction to Sulphur Mine.

[fol. 240] I. C. C. Tariff No. 24, Fallon Exhibit No. 20, shows a complete list of stations on the Brimstone. Item No. 50 shows a station called "Lockmoor Junction, La." That is on the Kansas City Southern.

The traffic under that rate is handled under a trackage contract. The rate published in the tariff covers the movement of sand and shell from points on the Kansas City Southern to Sulphur Mine.

The Brimstone has three stations at which it will handle less than carload traffic, but at the other stations will not handle anything but carload traffic. If there is any local traffic, we are ready and glad to handle it. We have a tariff that would cover the handling of less than carload shipments of freight between points on our railroad. The mileage scale would apply. The station list is published for the information of agents of trunk line connections that are located in the northern and eastern territory in billing freight down on our line. (R. 372-378.)

W. L. Jonxson, a witness called in behalf of the Texas Gulf Sulphur Company, was sworn. He testified that he was traffic manager of the Texas Gulf Sulphur Company, of Gulf, Texas, in charge of shipping. The plant of the Texas Gulf Sulphur Company is located at Gulf, Texas, not on any railroad. Further testimony by this witness concerning the Texas Gulf Sulphur Company was held by the examiner to be irrelevant and immaterial.

[fol. 241] At the hearing held in Memphis, Tennessee, on November 14th and 15th, 1922, before Examiner H. C. Keene, Mr. G. H. Bacon, a witness for the Respondents, testified:

He was Assistant Auditor for the Kansas City Southern Railway Company with his office in Kansas City, having had sixteen years experience, the last fourteen of which were with that Company in the capacity of Traveling Auditor, Freight & Passenger Accountant and Assistant Auditor in charge of disbursements and general accounts.

That he was familiar with the Commission's order issued in this case on April 4th, 1922. That in carrying out the instructions of the Commission in that order a meeting was held at Sulphur, Louisiana, from May 21st to May 27th, 1922 by representatives of all the Respondents for the purpose of formulating plans for making a study of the costs to the Brimstone Railroad & Canal Company in performing its common carrier service to and from its connections. That a careful study was made on the ground of the physical conditions under which the carrier operated, the nature of the service rendered, both by it and The Union Sulphur Company, which was involved in the cost study by reason of service rendered to the Brimstone in the past without cost or at nominal cost. That the operations were watched; trips were made over the line and all things thoroughly discussed in order to furnish concise and accurate data. That the Respondents agreed that the cost study would be conducted along the following lines:

[fol. 242] First, the facilities of the Brimstone Railroad & Canal Company and such facilities of the Union Sulphur Company as are used by the Brimstone in its common carrier service, would be zoned in such a manner as to as nearly as possible separate the facilities as between those used exclusively in its interchange business with the South

ern Pacific Company, those used exclusively in its interchange business with the Kansas City Southern, and those used in common in handling business of both the Southern Pacific and the Kansas City Southern Railways.

Second: That an actual record would be kept of the exact time that the engines of the Brimstone Company worked in each of the zones during the given test period, which period was fixed and the tests made between the dates May 26th and June 1st, 1922, inclusive.

Third: That a similar record would be kept of the exact time spent by engines of the Union Sulphur Company performing service which should be performed by the Brimstone Railroad & Canal Company, and which the Brimstone Company was not in position to do without placing additional engines in service at additional cost.

Fourth: That the operating accounts of the Brimstone Railroad & Canal Company for the year 1921, would be analyzed and such re-adjustments, additions, or eliminations would be made as might be found necessary to present a fair and true exhibit of the operating costs which were or should have been incurred by the Brimstone Company in its operations during that year, and that these figures would be used as a basis of costs.

[fol 243] Fifth: That operating costs as developed for the year 1921 would be applied to the respective zones as mentioned, and the costs for each zone equated to the period of time corresponding to the period over which the actual test was made.

Sixth: That a record be kept of the actual movement and of the number of loaded cars handled to and from each connection during the test period.

Seventh: That costs would be reduced to an engine hour basis and costs per car to and from the Brimstone Company's connections with the Southern Pacific Company and the Kansas City Southern Railway computed on the average length of time required to handle a car to and from each connection.

That the plan was agreed upon with the approval of the representatives of the Commission, one of whom, Mr.

Kearn, remained on the ground while the test was being conducted. That an examination of the accounts for 1921 showed adjustments necessary to be made to reflect expenses to which the Brimstone Company should be subjected, which adjustments are shown in the exhibits submitted.

That the property of the Brimstone Company was divided into three zones designated as Southern Pacific zone, including property used exclusively in interchanging business with the Southern Pacific Company; the Kansas City Southern zone, including property used in interchanging business with the Kansas City Southern; and common zone including property used in connection with both its connections and which also included tracks belonging to The Union Sulphur Company used by the Brimstone in its common carrier service in the maintenance, housing, etc. of its [fol. 244] engines. That the operating costs, including the adjustments mentioned for 1921, were equated through a seven days' period corresponding to the period over which the engine hour time study was made and the equated figures were assigned to each of the three zones, the separation of these operating costs by zones and the formula used being found in the exhibits.

That a man was placed on each Brimstone engine when operated from May 26th to June 1st, 1922, inclusive, to keep a record of the exact number of minutes each engine worked in each zone each day, which determined the total number of minutes the engine worked in each zone during the seven days' test period. That a man was also on The Union Sulphur Company's engine to keep a record of the time spent by it in performing service which that Company was entitled to require of the Brimstone as common carrier service, which, when performed in the common zone, was added to the time spent by the Brimstone engine in each zone.

That as a result of this study the operating expenses were allocated into three parts; first, to the handling of business over facilities used exclusively for the Southern Pacific Company; second, the handling of business over facilities used exclusively for the Kansas City Southern Company; and, third, the handling of business over facilities in the common zone. That the record of the number of minutes spent by the engine working each of the zones

was reduced to hours and that by dividing the hours applied to each zone into the operating cost in each respective zone a result was arrived at showing the cost to operate an engine one hour in each of the zones.

[fol. 245] That during the test period a record was also kept of the cars handled in each zone and that by dividing the number of cars handled in each zone into the number of hours the engines worked in their respective zones there was determined the average minutes per car required to handle it in each zone during the test period, and by applying the engine hour cost for each zone to the average minutes per car handling time in each zone there was found the average cost of handling a car through each respective zone. That each loaded car was then traced through the zones through which it passed during the test period so as to accumulate the average cost per car for each zone into one unit and that the exhibit submitted by this witness showed the results obtained.

That the studies put in the form of exhibits were made at the Brimstone's office and submitted to the Commission.

That Exhibit No. 24 filed in connection with his testimony contains an explanation of the method used, a description of the three zones referred to, and the formula showing the basis of assigning various operating costs to different zones. That Exhibit No. 25 is a map of the properties of the Brimstone Railroad and The Union Sulphur Company with a legend showing the various ownerships. That the brown tracks shown on this map and the purple tracks at the right end of the map belonged to the Southern Pacific and Kansas City Southern respectively and were used in interchange of business with the Brimstone. Their maintenance was not included in the costs shown in the exhibits, but the time that the Brimstone engines worked on the tracks was included in the time study. That Exhibit No. 26 shows by zones and days the number of loaded cars handled into each zone and the number of minutes of engine time consumed in such handling. That Exhibit No. 27 is a statement showing detailed operating expenses and adjustments on which the cost study was based. That Ex- [fol. 246] hibit No. 28 is a statement reducing the engine hour time and operating costs to costs per engine hour as divided between the two zones and in total. Exhibit No. 29 shows a return on investment on the basis of 6%. That

Exhibit No. 30 is a recapitulation of the study of operating costs during the period showing separately the cost of handling business with the two connections. That Exhibit No. 31 is a statement showing cars interchanged with the Southern Pacific and Kansas City Southern Railroads based on the time study as to engine hours, operating costs, taxes and adjustments for 1921 shown in the previous exhibits, but the number of loaded cars handled is based on the average number of cars handled per year for five years ending December 31st, 1917, 1918, 1919, 1920 and 1921. The number of cars handled during 1921 and the number of cars handled from January to May, 1922 all equated to a seven days' period. That the statement shows the relative density of cars handled as between the period covered by the exhibit and the test period. That Exhibit No. 32 shows costs of interchanging cars with the Southern Pacific and Kansas City Southern Companies based on the time study as to engine hours, number of cars handled as developed during the test period, and as to taxes for 1921 and adjustments, but the audited operating costs shown are based on the average yearly operating expenses for the five year period mentioned, the purpose of the statement being to show that the operating expenses used in the study are comparable with operating expenses with the five year period ending December 31st, 1921.

That the statements of the operating expenses and taxes of the Brimstone were compiled directly by him from the [fol. 247] original book entries so far as the audit accounts for the year 1921 were concerned and the adjustments were made from the study of conditions. That no allowance was made for the back haul from the track scale for the reason that after a careful study it was found that such movement was not out of line or order; that the track scale is most conveniently located, and it was considered that the weighing of shipments was part of the common carrier service. That Mr. Elmore, a representative of the Commission, was present when the question was discussed and that it is my recollection that he agreed with this conclusion.

That he did not know who paid the weigh-master's salary.

On cross examination by the Attorney for the Intervenor, Santa Fe Railroad, this witness testified:

That he was not an employee of the Brimstone Railroad and that he was appointed on behalf of the Kansas City Southern Railroad, one of the Respondents, to make the cost study. That Mr. Druschke represented the Southern Pacific and that the Brimstone Railroad was represented by Mr. Maxwell and various employees. That he had no connection with The Union Sulphur Company but was employed by the Kansas City Southern Railway Company in the capacity of Assistant Auditor. That, assisted by Mr. Druschke, he obtained the figures used in the cost study from the records of the Brimstone Railroad. That he took the accounts shown by their books and reported to the commission for the year 1921, analyzed and adjusted the cost study on that basis. That the formula used in dividing the operating costs was made up from past experience and arrived at in conferences between representatives of the Respondents.

[fol. 248] That so far as the Brimstone Railroad is concerned the traffic handled by it does not leave the State, although the movement, by reason of the destination of the cars, would be interstate. That the formula used in the cost study was suggested by the Commission, in so far as applicable.

That there was included in the statements a charge to the Brimstone representing the common carriers service performed by the Union Sulphur Company based on the judgment of Mr. Maxwell, Mr. McKerrow and Mr. Brower of the Brimstone and Mr. Glover of the Southern Pacific.

That he did not use his own judgment personally in arriving at the costs of the service performed by The Union Sulphur Company. That he was not present on the engines used in the study, but was present part of the time while the study was being made.

That the engines used in the cost study traversed every track during the test period. That when the engine passed over point "A" shown on the map it was charged to the Southern Pacific zone during all the time it worked in the zone making deliveries or until it came back to point "A." While the engine was working from point "A" to point

"C" around the blue lines, or from point "A" to point "C" diagonally on the yellow line or in the colored track north of the yellow line, it was charged to the common zone. When it was on the track from point "C" to point "E" it was charged to the Kansas City Southern zone. That when a car came from the Southern Pacific Line it was picked up by that Company on the interchange track, hauled over tracks "D" to "A" and "A" to "C" blue lines.

[fol. 249] The Brimstone engine might pick up the car off of the blue track, designated track T to U. That track is used principally as a storage track. They were not working the sulphur bins from that side at the time this test was made.

It is the custom of the Sulphur Company to take the box cars which have been loaded with sulphur at their box car loading plant over the track scales on the blue track between T and U only for the purpose of keeping the loading within the maximum. Taking a representative movement of a box car loaded with sulphur from the sulphur loading plant, the movement would be from the loading plant over the track U to T, to its connection with the track A to C, the through line which would not touch the track F to G or F1 to H. The car would come back to point A and up to the track scale on the yellow line A to C, and then back down over that line to the Southern Pacific down to the track A to D and be placed on the Southern Pacific connection, if the shipment were moving to the Southern Pacific. The movement described is an all-rail movement.

The first example I gave you will answer your question on the gondola car loaded with sulphur going to the Southern Pacific. The Brimstone engine would pick the car up either within the Sulphur Storage Plant facilities or on the blue track A to C, if it had been backed out on that track, it would haul the car over the blue track A to C, to the point A, and then over the yellow track from point A to the track scale located on the yellow track A to C, scale the car, pull it back down over the yellow line to the point A, over to the Southern Pacific tracks A to D and set it on the Southern Pacific interchange.

[fol. 250] Exhibit No. 26, sheet 1, shows that on May 28th no cars were handled in the common zone or by the Union Sulphur Company engine in the common carrier service.

Forty four minutes are charged to the Sulphur engine in the common carrier service for the Brimstone, which represents the work of the Union Sulphur Company engine switching oil to the oil facilities, which cars had come in the previous day and had been counted in the previous day's account (568 573). Also, in moving empties around preparatory to economical and efficient operation for the next day, all cars handled by these engines had previously been counted once into the zone and they were not counted during this time or it would have been a duplication of cars.

The setting of cars on the tracks by the Union Sulphur Company engine was preparatory to efficient and economical operation of the next day. These movements were on the blue tracks. The 44 minutes of time which should be properly charged as time consumed by the Brimstone engine is not intra plant switching. It is common carrier service. There is a difference between intra plant switching and common carrier service. These cars had not been placed in the plant. They were on the blue lines or on the yellow lines. They might have been scattered all over.

The cost study was based as to the number of cars only on the loaded cars, for the reason that our study has shown that every empty car that comes in goes out loaded, and that every loaded car that goes out, comes in empty; in other words, there is an empty and loaded movement for each car handled. If some car comes in loaded and goes out loaded in each case, it is counted as two cars. So that [fol. 251] by considering only the loaded cars we reduced the calculations, and had we considered the loaded and empty movement, we would have had to divide the time as between the two. There was a loaded car for each empty car handled. It brought the same results to count the one loaded car as to count it two cars, one loaded and one empty. In figuring the engine hour time as shown on exhibit 26, the car was counted only one time in each zone. (R. 575).

During the seven day test period, approximately 92 per cent of the traffic moved to the Southern Pacific interchange, as against 8 per cent to the Kansas City Southern. I think the seven day test period which we used is more than fair in this instance, for the reason that the exhibit submitted shows that there were more cars handled during this seven-

day test period than during a corresponding period of five years ending December 31, 1921, or of the first five months of 1922, showing that they were handling more cars at a correspondingly even operating cost, which naturally reduces the cost per car as shown by this exhibit.

The average time per car in making delivery to the Southern Pacific at Brimstone Junction is 6.5647 plus .8434 minutes, or a total of 7.4081 minutes per car. The average time of delivery of each of the 447 cars to the Southern Pacific moved through the Southern Pacific zone, that is, from A in yellow to what is called Brimstone Junction, that is, just into the Southern Pacific zone, was .8434 minutes. Approximately 92 per cent of the traffic that moves to the Southern Pacific is handled over the entire line of the Brimstone Railroad for a distance of .75 mile in less than one minute per car. I do not know the length of the tracks of the Brimstone to the Southern Pacific zone from point [fol. 252] A shown in yellow on the map, Exhibit 25, to the connection with the Southern Pacific at Brimstone Junction.

The service performed by the Brimstone in that portion of the tracks which was allocated to the Southern Pacific zone is approximately 1.75 miles. I cannot give you the length of the additional movement required to the Southern Pacific tracks. It would be from an average of perhaps one-eighth of a mile east of point B on the blue tracks down over the blue tracks to point A up to the track scales and back to point A, perhaps a mile and a quarter or a mile and a half. The loaded cars of sulphur would actually travel that distance, which is my estimate of the distance. My estimate was a mile and a quarter to get the car from the sulphur bin to the track scale back to point A where it went into the Southern Pacific, which is given an additional movement of one quarter mile to my estimate of one and a half miles, and the time consumed in the Southern Pacific zone is .84 of a minute to a car and also incurs the service of 6.58 minutes in the common zone to complete that haul, or a total of 7.41 minutes to make the complete haul. (R. 581).

Referring to the track scale on the Brimstone tracks shown in yellow on the map between A and C, there would be no back haul over the blue lines when the car comes down over the blue track to point A and then from that

point went out over the track scale on the yellow line between A and C.

Referring to Exhibit 27, sheet 1, the item of depreciation on freight train cars is shown as $35,091.60 for the year 1921, approximately $3,000.00 per month. Depreciation [fol. 253] does not cover anything but cars. Depreciation is figured on the ledger value of the box cars, freight train car equipment of the Brimstone, making a ten per cent charge on the ledger value, which would make the average life of that car ten years. Ten per cent is the rate of depreciation authorized by the Interstate Commerce Commission which can be charged by the Brimstone. (581-587).

The figure of $124,155.00 as shown on Exhibit No. 29, sheet 2, under item 2, "Equipment", is shown as the cost of reproduction, but I don't know what that represents. I could not answer without going into the matter.

The item $13,198.00 shown on Exhibit 27, page 2, as the additional charge representing proportion of rental, maintenance and taxes on trackage of the Union Sulphur Company used jointly by the Brimstone Railroad and Canal Company in the conduct of its common carrier service is completely analyzed in the last three sheets of Exhibit No. 27. The various charges that go to make up this total sum of thirteen thousand odd dollars charged to the Brimstone are not actual charges. They are based on actual charges so far as maintenance is concerned, on the valuation figures furnished by the valuation engineer so far as interests and rentals are concerned, and on actual tax assessments so far as taxes are concerned. I do not know anything about the valuations. I do not know what taxes the Union Sulphur Company paid; they are not in these figures at all, or in this exhibit. The figures shown on the sheet of this exhibit to which you refer are taxes actually paid by the Brimstone.

Sheet 3 of Exhibit No. 27 is a statement showing analysis of taxes reported by the Brimstone for the year ending [fol. 254] December 31, 1921, and amounts applicable to operating expenses. The statement actually shows 1921 taxes of the Brimstone. We have eliminated from the cost study the sum of $10,104.74 taxes paid by the Brimstone as non-operating taxes. In other words, we have taken out their income tax payment, their tax payments on the canal, and a slight adjustment of 4 cents from the operating

costs, giving the exhibit the benefit of that reduction (588,593). No taxes for the Sulphur Company are included. We eliminated the taxes for the canal, non-operating taxes. We used in the operating cost study $11,199.06.

The Brimstone should be saddled with 100 per cent of the taxes it pays, and we have saddled that company with the actual taxes which it paid, which under the Interstate Commerce Commission is chargeable to operating expenses.

The charge of 25 cents per barrel on fuel oil is the amount which the Brimstone should pay. The charge is not made, and has not been made in the past; but we contend that in the future, and for the purpose of having the Brimstone bear its proportional cost in its operation, it should pay 25 cents per barrel more for oil (R. 594-595).

From experience on the Kansas City Southern as to the cost for overhead facilities, and so forth, the charge of 25 cents per barrel plus the freight to the Union Sulphur Company for all oil handled by the Brimstone is a very reasonable charge, in my opinion, for the service which the Brimstone gets for which it had previously paid the Sulphur Company.

The $80.00 which is charged per month for water by the Union Sulphur Company to the Brimstone is ascertained [fol. 255] on the basis of the usual charge for water furnished by railroads to other railroads or industries generally over this country. That is based on the charge of $1.00 per tank furnished. It includes the charge for the facilities, pumpers time, etc.

The $108.00 shown on sheet 5 of the same exhibit for the rental of engine house, for housing and furnishing steam for steaming up engines of the Brimstone was made after an investigation as to the reasonableness of that charge. The charge was arrived at after a careful survey of the ground and the service rendered, the nature of the housing, in connection with the representative of the Brimstone and Mr. Kirkpatrick, the valuation engineer, and with the representative of the Southern Pacific. We arrived at that charge considering the average cost for the service throughout this country as our experience showed us.

I do not know anything about the Southern Pacific. The Kansas City Southern, so far as I know, has never purchased water except possibly in detour movements, and

they pay 75 cents to $1.00 a tank in this same territory. I have to approve the vouchers and pay the charges of the Kansas City Southern, and I become familiar with them (R. 595-598). I act in the capacity of assistant auditor in charge of general accounts and disbursements of the Kansas City Southern.

The cost of empty cars in and outbound moving over the Brimstone's rails is taken into consideration in the study, but the number is not included in this exhibit. Only the loaded cars are counted in this exhibit.

I was present when the discussion took place in arriving at the figures shown on Exhibit 27, page 9, as to the esti- [fol. 256] mates made by operating officials and employees of the Union Sulphur Company and the Brimstone showing the cost of the Brimstone's proportion of maintenance and repairs amounting to $8,146.00. Others present were Mr. Maxwell, Mr. Brewer, Mr. Keever, Mr. McKerrow, Mr. Gruschke, Mr. McCall, and Mr. Glover. These were employees of the Brimstone, the Union Sulphur Company, the Kansas City Southern Railway, and the Southern Pacific Company. I do not know that the charge is an absolutely accurate charge, but it was the judgment of those present (R. 600).

The first figures shown on sheet 8 of Exhibit 27 represent the actual expenses incurred by the Union Sulphur Company in the maintenance of its permanent tracks for the year 1921, or a total of $18,576.67. It does not follow that each foot or 100 feet of this track cost the same to maintain it. Some tracks are used very slightly, others to a great extent. And the particular tracks to which that note applies are that portion of the Sulphur Company's permanent tracks which are used excessively in the handling of this business. And Mr. McKerrow, Chief Engineer of the Brimstone Company, said that it required a great deal more maintenance on those particular tracks than on the average of all tracks, and we therefore established the differential of one and a half to one mile. That was arrived at by conference between employees of the Union Sulphur Company, the Brimstone, the Kansas City Southern, and the Southern Pacific (R. 600-602).

On page 10 of Exhibit 27, 90 per cent of the interest shown on certain tracks has been charged to the Brimstone,

and 35 per cent of the interest on other tracks has been charged to the Brimstone. The purpose in charging the [fol. 257] Brimstone interest in the amount of 90 per cent of these tracks which are owned by the Sulphur Company is based on the proportional use by the respective companies on the same basis that the maintenance was divided (R. 604). The 35 per cent interest charge on the other tracks to the Brimstone was arrived at in the same manner.

The first block of figures on Exhibit 27 represents the cost of handling cars to the Southern Pacific and the Kansas City Southern Railway, separately, based strictly on operating expenses, taxes, and adjustments in operating accounts. The second block of figures represents costs based on those same expenses plus return on investment. The average cost of handling a car to the Southern Pacific, without taking into consideration the interest on the value of the property as shown by the exhibit is $5.9625, and as to the Kansas City Southern, $19.4297. Figuring in the interest, there is a difference of $1.65 per car (R. 686).

On Exhibit 31, the average cost on the basis of which the statement was compiled for the five years ending December 31, 1921, was $8.11 per car, that being the average cost for the period from January to May, 1922, inclusive. For the five year period ending December 31, 1921, the average cost was $8.11 approximately. As I explained in connection with this exhibit (Exhibit No. 31) it is based on the same time study as to engine hours, operating costs, taxes, and adjustments for the different periods as was used in the original report, but the number of cars handled were based on the average number for the five-year period. The reason the engine time is different is because we used a different number of cars. The sum of the Southern Pacific and the Kansas City Southern engine time equals the en- [fol. 258] gine time on the other exhibit. The cost figures used in Exhibit 31 were the cost figures for 1921.

The study was not confined to sulphur movement. It includes all the traffic handled by the Brimstone. We find that the average cost per car in handling business to and from the Southern Pacific, including operating costs and taxes only, is $5.9625, and of the Kansas City Southern, $19.4297. This is based on the time shown in the cost study

exhibit 30. In making the figures which were submitted, I had access to copies of the annual report of the Brimstone to the Interstate Commerce Commission.

The average cost of legal expenses during the five year period prior to December 31, 1917, was $2,323.00.

On the same exhibit, sheet 1, traffic expenses are shown as $15,426.00. I think as an accounting man this is properly chargeable to the Brimstone. That item was of such an amount that we investigated it. It shows the salaries of representatives of the Union Sulphur Company and the Brimstone, men who have handled the affairs of both companies, prorated on an equitable basis, the New York office expenses, the expense of clerks in attendance on the officials whose salaries are charged to the accounts. The item of $5,588.50 shown on sheet two of the exhibit as salaries and expenses of general officers is for officials of the traffic department charged to traffic expenses under the I. C. C. classification; other officials, such as the president of the railroad, is charged to general expenses under the I. C. C. classification. It is simply a division of expenses in accordance with the classification of the Commission.

The Kansas City Southern has a track scale at Port Arthur. The track scale at Sulphur Mine is used for weighing of sulphur shipments, regardless of whether in [fol. 259] box cars or gondola cars. So far as the track scale on the Sulphur Company's track is concerned, I made no investigation as to its use, as it was not involved in the cost study in any manner. So far as the track scale on the Brimstone track, A to C, on Exhibit 25 is concerned, they weigh both box car and gondola car shipments on that scale. The primary purpose of taking cars to the scales on the Brimstone is to secure weights to use in its invoices. I know that the shipper has a right to require of the carrier to furnish a track scale weight. I also know that it is obligatory on the carriers to track scale shipments in order to arrive at the proper weight on which to assess freight charges.

Redirect examination:

When making up the final figures incorporated in the cost studies and as reflected in the exhibits filed, I had in my possession and used the original reports that were

made up by men on the engines as well as the original records of the Brimstone on file in their office. These studies are all made up from original reports or records. The cost studies were made jointly by respondents, representatives of each being present at all times. I was in charge of the work. (R. 619)

E. T. Brewer, a witness for the Brimstone Railroad and Canal Company, testified substantially as follows:

I live at Sulphur, and am yard master and loading foreman of the Union Sulphur Company. I was consulted about the information on the map used in the cost study before it was made up. When the cost study was made in May, men were put on the Brimstone engine and on the Sulphur Company's engine for the purpose of getting the [fol. 260] cars as they moved. Whenever they came out on the engine, I showed them which were the zones, pointing out the Union Sulphur Company's tracks and the Brimstone tracks. I explained what tracks we wanted them to keep time on. I am familiar with the tracks which belong to the Brimstone and to the Sulphur Company, and pointed out to the men on these engines where those tracks started and where they ended. I had nothing to do with telling them what to do. I was present during the entire seven-day test and saw the men on the engines every day and rode on both engines every day while the men were on them. I gave them no instructions. Their instructions were given by Mr. Bacon or some one else. The Brimstone engine hauled the traffic on the blue lines from W to C, which traffic was destined to the Southern Pacific connection, then through the Brimstone main line back over the track scale. The track scale H to A was probably blocked with sulphur shot down on them, or blocked for repairs, and we pulled the cars out from C to W to C and back again to A when going to the Southern Pacific. On a movement to the Southern Pacific, these cars were first moved out on the line of the Brimstone past point C, then back over the main line from C to A, that is down to the scale on the track between A and C, then down to the Southern Pacific, then back to the Southern Pacific interchange.

I have been employed with the Union Sulphur Company since 1907. All of the operations of the Sulphur Company's engines and the Brimstone's engine were under my supervision. Ninety per cent of the use of the tracks colored in blue were by the Brimstone. The Sulphur Company engines never get out on the Brimstone tracks to perform any service. The use of the Sulphur engine is confined to [fol. 261] the blue tracks and to the green tracks. The Brimstone engine performs service on the track shown in green to the warehouse and depot to take a car of merchandise or lumber or pipe, whatever it may be. The cars for the Sulphur Company for loading at the storage plant are placed at the bins at times by the Brimstone. That track is shown in black and is designated as the box car loading plant on the map. (R. 627.)

On the track shown in black marked "Box Car Loading Track," the Brimstone does not use that.

The Brimstone operates on the blue track between W and T, and then backs the cars down in and loads them. The Brimstone engine goes on the green track marked R to S to reach the fuel tank of the Union Sulphur Company to take fuel. The green track from R to S is used by the Brimstone to take fuel oil, and goes on the tracks marked P to Q for water. The regular train crews were on the engines at the time the men who were checking their operations were on them. (R. 630.)

Cross-examination.

I am employed by the Union Sulphur Company as loading foreman and as yard master for the Brimstone. I am also weighmaster for the Western Weighing Association. The Union Sulphur Company accepts my weights for invoices on cars of sulphur. I render two services, one to the Brimstone in the capacity of yard master, and the other in the capacity of loading master for the Union Sulphur Company. My services for the Brimstone require me to handle their work over the Brimstone Company's railroad from its junction point with the Southern Pacific up to where its tracks and the Southern Pacific join with the Union Sulphur Company at the Houston River and Canal [fol. 262] Company's warehouse, also over the yellow line

through the track scale to point C on the other part of the railroad which goes to the Kansas City Southern. My duties consist of seeing that the Brimstone gets the empty cars in and seeing that they are used, and I have an assistant weighmaster. I weigh the cars if he is not present. We weigh the empty box cars and take them to the sulphur bins. My assistant is employed by the Brimstone. His salary is paid by the Brimstone. My salary is split up in the office. I receive the Union Sulphur Company's check. I receive no compensation from the Brimstone. My assistant is also a member of the Western Weighing and Inspection Bureau. I have two assistants that are sworn weighmasters. Both of them are paid by the Brimstone.

I go to the Southern Pacific interchange daily, and there are times when I do not go to the Kansas City Southern more than once a week. I am familiar with the outlay of the tracks and the physical condition of the grounds.

My assistants perform other services besides weighing. One is switch engine foreman. He performs duties for the Brimstone in connection with the handling of traffic over that route to the Southern Pacific. He is, you might say, a conductor. He takes the numbers of the cars, checks the cars in and out, and does the regular switch engine duties. If I am not at the scale, he performs the service of weighing.

The Union Sulphur Company sells sulphur by the Brimstone scale weights, and we weigh the cars to get a correct weight on them. The Brimstone weighs the cars and furnishes the weights to the Union Pacific to make the invoices from. I weigh the cars and make the reports out to the Western Weighing Association and the Western pays [fol. 263] me $75.00 a month. I receive that in addition to the salary which is paid me by the Union Sulphur Company. I receive no pay from the Brimstone.

I am familiar with the different zones as shown on the map with respect to the handling of this traffic, but not as to the accounting part.

A car of sulphur loaded at the point called "Sulphur Storage Bin" on the track of the Sulphur Company, the black dotted lines running through the sulphur storage bins as shown on the map, the car goes down towards C, is placed on the scale and is brought back to A and out to D

and put on the transfer tracks of the Southern Pacific. In handling sulphur over this route, the car is loaded at the south end of the sulphur bin (95 per cent is loaded at the south end) and goes up to A and back to the scale between A and C. The car is weighed and taken back to point A again and on to the Southern Pacific interchange. (R. 643.) I do not know who owns the property south of the Brimstone line, A to C. There is nothing but woods in there.

From 5 to 20 cars were handled by the Brimstone in one drag. I could not tell how many were handled during the test period. The cars were loaded with sulphur, both box cars and gondola cars. I have no way of segregating the number of box cars from the gondola cars. We do not weigh any cars on the Union Sulphur Company's tracks. The two track scales are not maintained at all times in good condition. The Brimstone's track scale is always maintained in good condition. The scales owned by the Union Sulphur Company are used to adjust cars, and not to weigh them on. We have a box car loader on the side [fol. 264] of the Union Sulphur Company's scale, and we set the box car on the scale and it is loaded until the car has its capacity. It is then taken out. That is the way we do the loading of those cars. The scales are near enough to determine the capacity. By weighing them on the scales on the tracks of the Union Sulphur Company just south of the storage bins, we obtain the maximum load. Those scales are primarily maintained for the purpose of determining whether those cars are overloaded. None of my assistants handle the scales on the Union Sulphur Company tracks. They are watched by a Mexican. He shuts off the box car loader when the beam comes up. After the box cars are loaded at the sulphur bin, the Brimstone engine comes up and gets them and takes them out. We maintain an engine of the Union Sulphur Company at all times at the sulphur loading bins to handle these cars, and still we pay the Brimstone engine to come up and get the cars when the Union Sulphur Company could shunt them down to the Brimstone.

The Union Sulphur Company's engines do not go down on the tracks to the Southern Pacific between the points D and A, in yellow, D in red, and A in yellow, to handle traffic to the Southern Pacific. We do not spot a car loaded

with merchandise around T and G. That merchandise would come down from A and we would take it to the warehouse. A car of oil is spotted by the Brimstone where it is unloaded. If the Brimstone engine was at the warehouse, it would take a car that was there out with it. The Union Sulphur Company engine would not handle traffic from that part of the line between the point marked "warehouse" and the connection with the Southern Pacific. They would take that from the point marked "warehouse" to G or H, or probably T.

[fol. 265] I have been employed by the Union Sulphur Company since 1907. I do not recall during that time that an engine of the Union Sulphur Company handled merchandise cars from the point "warehouse" to its connection with the Southern Pacific. Universally our practice is to handle the traffic with the engines of the Brimstone.

In making deliveries of traffic to the Kansas City Southern, the Brimstone engine goes down between E and where this point intersects with the Kansas City Southern. The cars moving to the Kansas City Southern are loaded at the sulphur storage bins and then move from the point where loaded at the sulphur bin to point A. The point A is termed the Southern Pacific zone. From that point they are moved to the point designated as track scales on the Brimstone tracks between A and C for the purpose of being weighed. On these weights the Union Sulphur Company makes out invoices, and the Brimstone weighs the cars to get the weights to be billed out in freight charges. That is the only time a carload of sulphur is weighed on the Brimstone tracks. After leaving the point designated C on the map, the car goes over that part of the railroad in red for delivery to the Kansas City Southern. (R. 663.) I do not know the distance. We call it six miles. We do not pass through the point marked "box car loading plant." Some of the cars do pass over the adjusting scales, but the majority of the cars that go to the Kansas City Southern, about 80 per cent of them, go over the Brimstone track scale and then out through the point C to the Kansas City Southern. They would have to be carried to the Brimstone scales for the correct weight. That is economical operation [fol. 266] to move them through the point A. The route over the box car loading scales would be shorter than over

the Brimstone scales. If you had nothing to do but pick up the car and go from the box car loader to the Kansas City Southern, it would be quicker, but they would have to pick the cars up at the point A and bring them to the track scales on the Brimstone.

Sulphur that moves out over the Southern Pacific is moved in trainloads. We generally get from 10 to 15 cars, as much as the engine can pull at one time, in a drag; about ten cars would be the average drag down to the Southern Pacific.

I was the overseer or foreman of the men who rode on the engines during the test period. I designated them to the three zones. I did not tell them how to keep the time. I told them these were the zones that had been mapped out for them. I do not know how they kept the time, as I had other duties to perform. I do not believe I was riding the engine an hour during the eight or ten hours they worked, but I was in sight of them practically all the time, unless the Brimstone engine went to the Lockport Division, when it was out of my sight out there on the Brimstone track. These men on the engines carried watches. (R. 670.)

We work one trick at the mine at the present time for the Union Sulphur Company engine, and one trick for the Brimstone. There were five men on the Brimstone engine and two men on the Union Sulphur Company engine. We have a foreman, two switchmen, an engineer, and a fireman for the Brimstone. The Union Sulphur Company engine has an engineer and a switchman. There may be one hour in a whole day of idle time, on the average for each engine, [fol. 267] This is an average per month, but not every day. Some days the engines do not have any idle time. Some days we do not have anything to load, but when the cars do come, we have not a minute to spare. Probably all of the eight hours of idle time come in one day.

The engine of the Union Sulphur Company was working on the blue lines charged to the Brimstone in this seven-day period. The Brimstone's engines very probably did not have an hour spare time at the right time. There has been no change in the handling of traffic to the Southern Pacific since 1920 (R. 677-688).

Cross examination:

We weigh the cars empty on the Brimstone scales, which is the same scale we weigh the loaded cars on.

Redirect examination:

The Union Sulphur Company never takes the cars out on the tracks of the Brimstone Railroad. They do not go on the Brimstone Railroad track and take cars and bring them into the Union Sulphur Company track. Cars going to the Kansas City Southern from points on the sulphur storage bins, loaded cars, which go through that bin, go out to the point marked C, are brought from the sulphur bin down to the point C and back up to the track scale on the Brimstone. In every case, we weigh the cars that are loaded in the sulphur bins on the track scales of the Brimstone. These weights are taken to the Brimstone agent.

In the seven-day test period (May, 1922,) there was no change in the operation of the plant, either on the part of the Union Sulphur Company or the Brimstone. The operation of the two companies during that time was just as it is [fol. 268] carried on normally. There was no rearrangement of the movement with the cars either to the track scale or in the plant. That was the practice previous to the test period, and has been he practice since.

Redirect examination:

The Brimstone has only one locomotive at a time engaged in its service under normal conditions. When I said the movement to the Southern Pacific was largely from the south, I meant that part of the bin near the blue track between points H and G. Some of the cars are loaded between B and C, pulled out to the point near C and carried around by B and H and G and carried to A to the scale. The principal part of the sulphur is loaded between B and T. All the cars are loaded inside of the sulphur bin on the black tracks. Those are temporary tracks (R. 685).

Recross examination:

The sulphur vat is permanent, and we build temporary tracks through it. The sulphur piles run 30 to 40 feet high. The tracks which runs from point C off the edge of the

storage bin to the point T are used by the Brimstone for the storage of empty box cars. We put the empty box cars in here probably 25 or 30 at a time beyond the box car loader, and then pull them out as we use them. The Brimstone engine puts them in there empty. At times, the Brimstone locomotives push the empty cars direct into the broken tracks shown on the bins, which are temporary tracks. It depends upon how long the track is. If it holds four or five cars, we use the Sulphur engine; if the track is long enough to hold 25 cars, we have the Brimstone shove them down there. The blue tracks between the points G and T, three in number, are used for storage tracks. It is neces- [fol. 269] sary to use the blue tracks, because we have to have them there to load with. One reason is because the facilities for loading in the sulphur bins are inadequate to permit spotting of these sulphur cars in one direct movement. If the facilities for loading sulphur within the storage bins were adequate, then there would only be one movement of these empty cars by the Brimstone locomotive.

Before I worked for the Union Sulphur Company, I worked for the Southern Pacific at Lafayette, Louisiana, Houston, and San Antonio, Texas. When I was working for them, the Southern Pacific would take a string of empty cars and push them into an industry, and if by reason of the fact that the industry is using its loading track it is unable to take these cars, the Southern Pacific would come back and place them a second time, when they are able to take them. The industries generally phoned for an engine when the cars are loaded.

We have more business on the tracks colored in blue than on the tracks shown in green. We have more movement on the blue tracks than on the tracks shown in green. We have more movement on the blue tracks than we would from the scale even to point C or E on the yellow tracks, but the movement on the blue track and the yellow track to the point F to the scale would probably be the same.

Redirect examination:

The shaded portion of the map marked Sulphur storage is not all covered with bins at one time. It is covered usually with about three feet of sulphur here all the time. It is now being worked in the center to the point T, which is

[fol. 270] westwardly. When I stated that most of the sulphur going to the Southern Pacific was removed from the south end of the bin, I meant from the center of the bin to the letter T, which I call the south end of it. When I stated at another time that the bin was in the vicinity of the letter U, it did not conflict with my statement that the sulphur was taken from the south end of the bin. When the tracks towards the letter T were blocked, we would pull the cars towards the letter U and come out by way of the letter B, H, and G, and back to T.

The tracks in the sulphur bin are very short, and they are movable. We take them up and move them all around the bins. They are close enough to the bins to be used for loading cars. That being true, it is necessary in order to get the sulphur out of those tracks to have, as a rule, two movements of the empty cars to those tracks for loading. I think the railroad company should furnish an engine for the second movement from the storage track into the loading track. (R. 691.)

Fuel oil cars come down to the storage on the blue tracks. They are usually pushed there by the Brimstone engine. It would be possible to have more adequate facilities for storage within the sulphur bins there. There are no more loading tracks in the immediate vicinity of the bins, because we do not need them in the bins to operate, to load the sulphur. We could not store cars alongside of a point where we have blasted or dynamited.

Recross examination:

The interchange tracks at the Southern Pacific will hold probably 100 cars. I approximate that the interchange tracks at the Kansas City Southern will hold 45 cars. We [fol. 271] could not store the cars on the interchange tracks at the Southern Pacific and the Kansas City Southern. If you get one car loaded, you would not want to go six miles to get it, or five cars, to any point. (R. 695.)

Mr. Keith McKerrow, a witness for the Brimstone Railroad and Canal Company, Respondent, testified substantially as follows:

I am engineer for the Union Sulphur Company and live at Sulphur Mine. I am familiar with the operation of the Brimstone Railroad and Canal Company and the Union Sulphur Company at Sulphur Mine, Louisiana. I have been employed by the Union Sulphur Company since 1906. I am engineer for the Sulphur Company and the Brimstone. My check comes from the Union Sulphur Company. I made the map known as Exhibit No. 25, and am familiar with the distances shown on the map. There have been no changes in the distances as shown on the map since the case was originally heard. This map is a duplication of the map which was filed in this case on the original hearing, with the exception of the colored lines.

In my opinion, 90 per cent or more of the tonnage hauled over the blue tracks is Brimstone work. The Brimstone engines operate on these tracks intermittently. Traffic over the green tracks is mostly Brimstone traffic. The tracks colored in green are used by the Brimstone to get into the round house, designated "train shed" and the repair shop, and to get to the warehouse and deliver merchandise they get on those tracks marked P to Q, as there is a water tank or a water tower, and there is a fuel station where the locomotives get fuel. The Brimstone uses the tracks marked in blue for handling and bringing in the [fol. 272] sulphur cars and taking out the loaded cars.

I am familiar with the location of the sulphur bins on the shaded portion of the map marked "sulphur storage bins." Between two-thirds and three-fourths of this sulphur storage, the shaded area, on the southeast side of this area, is being pumped into. There are no tracks there at present. The amount of the storage area that is being pumped into is approximately two-thirds of the width of this portion from the southeast side of it towards the north. Two-thirds of that territory is at the present time being pumped into with liquid sulphur. It is not possible to place other tracks in the area where the sulphur is being pumped. Sulphur is 18 or 20 feet high all over the area now. The tracks as shown in black are temporary tracks. They are moved as the sulphur bins are pumped. When the bin is cleaned up, these tracks are taken up and more sulphur is pumped in.

The location as shown on the map in the shaded area is changed from time to time. That is not true of the track from U to T, which is a permanent track. It has been in the present location for at least six years. The track from U around T, back to T is also a permanent track. It was built in there in the spring of 1906 and has been in the same location ever since that date. It would not be possible to build any permanent track in the storage bin area, because at the present time, as I say, they are using two thirds of the southern side pumping into it, and the other side is being loaded out. They will be pumping into these bins on the northwest third of the bins until they are filled up, and when they get the other bin loaded out, they will start [fol. 273] loading at the south two thirds, and then pump the sulphur into the vacated area. (R. 702)

The operation is shifting back and forth and continues in that manner all the time. We pump in the bin as long as we have sulphur to load out of the other bins. That depends on the sales, of course, as to when it will be loaded out. Then they will commence to load from the next bin.

The box car loading scales, located on the blue line leading from T to U is a very old pair of scales. That was located at the mine in 1906. The blue track was built in there and the scales were set up on it close to the place marked "warehouse." Then they were used there as the official scales of the Brimstone until 1915. They were getting badly worn, and we bought a much bigger and new scale and set it down here, on the yellow line from A to C of the Brimstone, and the old scales were abandoned as junk, and later on when they put the box car loading plant in there, they set these scales in there and did not pretend to keep them in adjustment any closer than to tell whether a box car is loaded over the maximum or under the minimum. Within four or five thousand pounds is close enough. No inspector would look at them.

I consulted with Mr. Bacon and others during the test period when the cost study was being made at the Brimstone plant. I offered suggestions as to the proper ratio of the Brimstone tonnage to the Sulphur tonnage over certain tracks. (R. 706) On this portion of the Sulphur Company's track marked in blue, the cost of maintenance

is at least one and one-half times greater than the cost of the other Union Sulphur Company tracks. I have no actual figures on it, but I know that my track men do at [fol. 274] least one and one-half times as much work on that track as they do on the other. I have not the figures on that, but I know it from observation of those tracks over the past years. We have renewed the rails on the blue tracks once, and some of these tracks, this main line track from A up through the point H, have been renewed twice in sixteen years. The track B from the two points marked Q, shown in green, have been built since 1916. The track T to Q has never been renewed. The track R to B has never been renewed. The section of the track from P to Q, which is a part of the old belt line, was there in 1906. The track from R to S was there in 1906. From time to time, a few ties have been put in these tracks. These tracks have not been rebuilt in the sense that the blue line track was rebuilt. The excessively heavy traffic over the blue tracks and the sulphur dropping from the cars on the rails continually will eat the base of the rail, unless the sulphur drainage is kept away. We manage to keep the tracks clean all the time. The portion of the track from T to U would be covered with sulphur if they shot the fins down, but it is the sulphur droppings from the cars that are moving that covers them. Some of the sulphur dust from the cars shakes out on the trunk lines, but in here they couple up a whole jag of them.

When there is one car at the time, the Union Sulphur Company brings it out and gives it a kick up the main line and brings in another one and gives it a kick up the main line and lets them bump, and that goes on all day long every day. They are not breaking up those trains on the Southern Pacific.

The ratio of one and one-half to one for the maintenance [fol. 275] on the blue tracks is an estimate based on the fact that the same gang, drawing the same pay costing the same money would do one and one-half times as much work in maintaining the blue tracks as they would the green tracks. (R. 715.)

Redirect examination:

The tracks colored in green from R to the two points O are used by the Brimstone engine to go into the roundhouse every night and to go in for repairs and to take merchandise cars into the warehouse. The track marked P to Q is the water spout track where they go in for water, and the track marked R to S is the fuel station track. No sulphur is moved over the green track, so that the use of these tracks is very light. All of the sulphur movement is over the blue tracks. More than half of the tonnage that goes in over the green tracks is handled by the Brimstone Railroad. My estimate of 60 per cent of Brimstone wear and tear on the green tracks is based on the tonnage handled over them, and not on the number of times the engine went over them. The Brimstone's engine is a big 60-ton switcher, and the Sulphur engine is a little 18 ton. They are pumping into one bin which covers about two thirds of the area, and they are loading out of another bin which would cover another third, and possibly about one-fourth of that bin is still standing, and we are loading that now. The shaded space covers about 12 acres. (R. 718.)

Cross-examination:

About 40 per cent of the total tonnage handled over the green tracks is handled by the Brimstone. (R. 718-719.) When compared to the total tonnage, the tonnage handled [fol. 276] by the Brimstone is not very large.

The car repair shop is a little shop we have there for repairing what we call jimmy cars, little six yard dump cars belonging to the Union Sulphur Company, all for the Union Sulphur Company. It has nothing to do with this operation. Machinery and appliances and material gotten up to the batteries for the operation of the two plants, and also to that point marked "compressor house" goes over the Union Sulphur Company tracks shown in broken black lines. All materials for the plant come into the big warehouse, that is the material warehouse, and it is unloaded there and stored, and then as these different parts of the work need them, they are delivered around to the compressor and the battery.

We have wagon roads that go to the various parts of the works. In the case of a carload of bricks or other carload traffic, it would be delivered in a car.

My judgment is the basis for the ratio that should be established for the maintenance of the blue track from A to R. The Sulphur Company pays for the shifting of the tracks shown by the black lines running through the area marked "sulphur storage bins." The blue track from the point marked T to U has been maintained by the Union Sulphur Company. The track from T to U is a permanent track. I do not know that the condition of the ground under the blue track is any different from any of the rest of them. It is just the same territory that we have all around. It is not very high. The highest elevation we have there is 18 feet above sea level. The blue tracks and the green tracks are on practically the same ground. It would be more expen- [fol. 277] sive to build a railroad anywhere on soggy ground than on firm ground. With respect to the track between R and A, that is all little hills or little plots. It is all practically just alike. (R. 719-726.)

The average run down to the Southern Pacific is about six to eight miles an hour. The distance from A to D is about a quarter of a mile. From A to R, it is about half a mile, and from the point A going up the blue line to the first intersection of the tracks shown in the broken black line is 800 to 1,000 feet, and the distance from that point to the intersection of the two blue lines at point T would be about 500 feet. The distance from the point P to the point U, the blue track, is about 2,000 feet. The distance from the point T to the point U is about ½ mile distance area to this center of the shaded area, coming down from the point marked "warehouse" to the tracks in blue between R and A is about one-half mile. That is just an approximation. From the point A to the Southern Pacific right of way is under a quarter of a mile. The distance from the point A to a point on the yellow lines marked "track scale" is 1800 feet. The Brimstone track ends at the Brimstone right of way where the blue line connects on to the yellow line from the connection of the Union Sulphur Company tracks. The distance from the point marked "connection with Union Sulphur Company track" to the point D is 1500 feet. The distance from the point A over

the yellow and the red tracks to the point E on the Kansas City Southern is 7.14 miles. The distance from the point marked B in green to the point marked E is about 6.75 miles. The distance from the point marked "warehouse" [fol. 278] just north of the sulphur mine to the point marked C is about half a mile.

A loaded gondola car being delivered to the Southern Pacific is either pulled out in a northeasterly direction onto the blue tracks or it is pulled down in a southwesterly direction towards T. When a car is loaded in the shaded area, it is pulled out towards T, and the Sulphur Company's engine kicks them back up the blue line towards H until they get several of them in there. Then the Brimstone engine goes in and picks up that jag, varying numbers, and proceeds with them down to A. Then it shoves them back in on the yellow track and weighs them on the scale, and if there is a small number of them only, they shove them on over the scale. Then when a sufficient number have been accumulated in there to make it worth while to make a deliverys to the Southern Pacific, those cars are picked up there and taken back over the yellow tracks past A, and down to the Southern Pacific interchange. The distances from the central point in the shaded area to the point E is approximately .75 mile.

I am familiar with Exhibit No. 27. (R. 726-729.)

Mr. V. V. Kirkpatrick, Valuation Engineer of the Brimstone Railroad and Canal Company, testified substantially as follows:

I was present at a conference held at Sulphur Mine concerning the test period and the cost study made in accordance with the suggestion of the Commission and its report in this case. There were representatives of the Kansas City Southern, the Southern Pacific, and the Brimstone Railroad and Canal Company present plans for mak- [fol. 279] ing the cost study were discussed before the actual work of making the cost study began. I was employed in this case by the Brimstone Railroad and Canal Company as valuation engineer and made a valuation of that company prior to the original hearing. I filed with

the Commission the result of my valuation study. I furnished Mr. Bacon with a valuation of the Brimstone Railroad and Canal Company and two portions of the Union Sulphur Company's trackage, designated in blue and green on the map, to be used in his study. (R. 740-741.)

I made a personal investigation of those portions of the Sulphur Company's tracks which are included in my figures. The figures shown on Exhibit 29, second page, and the exhibit following, are the figures which I furnished Mr. Bacon.

The valuation of the Brimstone property furnished to Mr. Bacon in connection with the cost study were changed from those which were filed with the Commission in the original hearing in this case by adding the additions and betterments from December 31, 1920, to December 31, 1921. This increased the total value of the property approximately $23,000,000, which explains the difference between the value as shown on sheet 2 of Exhibit 29 and the value as originally filed by me with the Commission in the former proceedings in this case.

In arriving at the value of the property of the Union Sulphur Company which was included in the value on which the Brimstone Railroad and Canal Company claims a fair return, I used a survey of the quantities furnished by the engineering department of the Brimstone and the Sulphur Company. Approximately the same costs that were used by the Brimstone were used in this value. In [fol. 280] other words, the prices that obtained for materials and supplies during the pre-war levels, as of 1914. There was no difference in the method used in ascertaining the value of the Sulphur Company's property than that in ascertaining the value of the Brimstone properties.

The item of $35,091.00 shown on Exhibit 27, item 31-b, page one, was arrived at by assessing the certain rate of depreciation as approved by the Interstate Commerce Commission. The depreciation was figured on the cost of the freight train cars involved. In my study of the property of the Brimstone and the Sulphur Company, I discovered that the action of the sulphur against the steel parts of the equipment affected the depreciation of the equipment in use in their traffic. I do not think there is any such thing as depreciation, in so far as fixing values is concerned. If

the property, the equipment, or whatever is involved, is properly maintained, it is my opinion that there should not be depreciation accruing against it. When setting up a valuation figure as a basis for a return, I do not think there should be any depreciation deducted from that figure; but when setting up operating expenses, depreciation should be taken into consideration. In other words, depreciation is a factor to be considered in reducing net revenue by the amount of expenses to find the net operating railway income; but when you are building up your valuation to be used as a basis for figuring what your return on outlay should be, that does not exist.

The road could not be reproduced for the amount shown in the exhibit (No. 27), assuming that to be the cost of re- [fol. 284] production less the cost of depreciation.

I had nothing to do with the depreciation allowed by the Commission based on the actual depreciation of freight train cars for which out of a total of $142,880,080 operating expenses, $35,080,080 covered the depreciation of freight train cars. It is probably true that the charge for depreciation originated with the Brimstone and not with the Commission. It would be fair to assume that if the depreciation in the valuation I have made were taken into account, it would result in a considerable reduction in the figure set up to represent the cost of reproduction new.

The items shown for accounts 1 to 77 on Exhibit 29 are from extensions on costs of material and so on, of the quantities that were there as of the valuation date, June 30th, 1918. The unit prices for the individual items shown on the exhibit were as of date 1914. Those prices were increased 110 per cent to bring them to the plane of the 1920 prices over 1914, and then the additions and betterments were added from June 30, 1918, to December 31, 1921. The unit prices of 1914 were taken, because that was apparently a normal year, and those prices had obtained for a number of years, and they were increased 110 per cent over the normal prices to show the cost of reproduction as of December 31, 1920 (R. 749.)

The figures shown as representing working capital were gotten from the bookkeeper as being the amount of working capital on hand as of December 31, 1920.

In making up this exhibit, I tried to follow closely the plan of procedure or theory of valuation as followed in fixing tentative valuations. In the case of the Kansas City Southern, they used the actual cash and the value of the [fol. 282] materials and supplies on hand on the valuation date. The figures for materials and supplies were obtained in the same way as the figures for working capital.

(NOTE: At the request of the Examiner, exhibits were filed showing the actual cash on hand, which is the equivalent of the figures shown on Exhibit 29 for working capital, for a period of years beginning in 1917 and ending December 31, 1921.)

The 16 miles of right of way for canals shown on the exhibit should be classed as non-common carrier property. I figured six per cent for nine months on accounts 1 to 75, inclusive, except account 2 (land). (R. 753.)

Cross examination:

According to my valuation, it will cost approximately $80,000.00 a mile to reproduce the Brimstone, which is 7.39 miles. On the basis of my valuation, it would cost in excess of $10,000.00 per mile to reproduce the Brimstone, including main line, sidings, spurs, and equipment. The Brimstone has no expensive terminals at any point on its line. (R. 755.)

The valuation of the Kansas City Southern is $54,000.00 a mile in the same territory. That company operates expensive terminals at Kansas City, Port Arthur, and various points on its lines. One of the principal things that makes the valuation of the Brimstone higher per mile than the valuation of other railroads in the same territory, for instance, the Kansas City Southern, is the much greater value of equipment per mile. The equipment on the Kansas City Southern has a valuation of approximately $23,000.00 per mile, and the Brimstone, $69,000.00 per mile. [fol. 283] The Kansas City Southern has 7.51 cars per mile, and the Brimstone has 2.8 cars per mile. The value of the cars per mile on the Kansas City Southern is $14,950.00 per mile, and the car value per mile on the Brimstone is $61,567.00 per mile. The value per car of the Kan-

sas City Southern is approximately $2,000.00 per car, and $3,000.00 per car in the case of the Brimstone. The figure of $76,811.00 shown on Exhibit 29, sheet 5, to be the value of the property owned by the Union Sulphur Company but used by the Brimstone in common carrier service was arrived at by taking the quantities involved and applying the pre-war level prices and increasing those by 110 per cent to bring it to the 1920 plane of prices. The property involved was pointed out as used by the Brimstone in common carrier service by the employees of the Brimstone and employees of the Union Sulphur Company or the trunk line connections. This item of $76,811.00 of the value of the property of the Union Sulphur Company used by the Brimstone in its common carrier service increases the value of the Brimstone property to that extent. (R. 755-756.)

I did not go into the total value of the property investments. On the reproduction statement, the cost of reproducing the freight cars was shown as $124,155.00. On sheet 1 of Exhibit 27, an item is shown as depreciation on freight train cars. This item does not apply to the $124,155.00, because there were some additions and betterments shown below of $231,936.00 for freight train cars. (R. 760.) I do not consider that the 110 per cent representing increased prices in 1920 over 1914 was too high as of 1920, although it is too high now. (November, 1922.)

[fol. 284] Referring to the valuation per mile of the Brimstone as compared with the Kansas City Southern, the Kansas City Southern has various expensive bridges that cross large rivers in this territory, and the Brimstone has no such structures on its line in the way of bridges, and is not subject to overflows.

Redirect examination:

The amount of $124,155.00, item 53 on page 2 of Exhibit 29, does not include the entire amount of the equipment which was owned by the Brimstone on the date of the valuation, so that the $35,000.00 depreciation shown on Exhibit 27, page 1, is not figured on the basis of $124,155.00.

Recross-examination:

The cost of reproduction is the money it would take to reproduce the property. It might or might not have any

value. The value involves intangible assets. The reproduction is figured on physical properties and is simply an estimate, because the property is not reproduced. (R. 766.)

Redirect examination:

If there were no Brimstone Railroad there today and a property were to be produced, equal in all respects to the present property of the Brimstone Railroad, the cost of reproduction new would be the value.

Mr. A. R. Druscitke, a witness for respondent, Louisiana Western Railroad, testified substantially as follows:

I am Assistant Auditor of the Southern Pacific Railroad, with headquarters at New Orleans, and my experience in [fol. 285] accounting extends over 17 years. I have participated in the preparation of the various exhibits offered in this case numbered 24 to 32. I have before me Exhibit 30, which shows the costs of delivering a car to the Southern Pacific as $5.9625, and that of delivering a car to the Kansas City Southern as $19.4297. I have considered the results that would flow from changing the deliveries as they occurred during the test period.

Exhibit No. 33 was offered and filed in evidence. The cost figures on this exhibit are the same as those shown on Exhibit 30. The fact that 447 cars during the test period were delivered to the Southern Pacific and 40 cars to the Kansas City Southern brought about the wide difference of cost per car handled. (R. 767-769.)

If a part of the deliveries to the Southern Pacific had been diverted to the Kansas City Southern, the cost figures would have changed as outlined on this exhibit. I used the expenses as used in Exhibit 27. I only redistributed the common zone expense, operating expense as shown in Exhibit 30 for the Kansas City Southern as they show thereon, and for the Southern Pacific as they show thereon. I changed only the common zone based on the number of cars handled to each junction, and varied that in proportion to the number of cars. The total expense of delivery to the two lines remains constant throughout. (R. 770.)

Cross-examination:

I have had no operating experience. I am only an accountant. Our purpose in submitting the exhibit is to show that in the case of the Kansas City Southern if the de- [fol. 286] liveries had increased and which they might and in all probability will in the future, the cost per car would be comparatively different. (R. 773.)

Mr. Joseph Lallande, a witness for respondent, Louisiana Western Railroad Company, testified as follows:

I have previously testified in this case and hold the same position as General Freight Agent of the Southern Pacific Lines that I did then. In my judgment as a practical matter, the divisions on sulphur and other commodities having origin and destination on the Brimstone Railroad should be the same via Brimstone Junction and the Southern Pacific Lines and via Mossville and the Kansas City Southern. It has been my experience and observation that it is the custom throughout our territory for short lines to receive upon classes and commodities generally the same divisions via the short haul as via the long haul junction points. If that were not the case, manifestly, the business would be sent via the junction yielding the short line the greater division, particularly where there is a community of interest between the short line and the principal industry or industries on that line. Manifestly, the business, or a great portion of the business, originating on the Brimstone would be sent via the junction yielding the greater division. There is a train operated daily with sulphur from Sulphur Mine to Mossville. It, in my judgment, is practically impossible to determine the precise additional cost of handling, say, five additional cars on that train to Mossville Junction, and — the option was offered to the shipper of sending those five cars to Mossville in a train that was to [fol. 287] be operated to Brimstone Junction, and a greater division was allowed to Mossville, unquestionably the cars would be sent to Mossville. (R. 775.)

With the exception of lumber, on which the Commission prescribed divisions in the Tap Line Cases, it is the uni-

versal custom to allow the trunk line the same divisions via the short line as the long haul divisions. As to lumber, the tonnage is very largely equalized between the trunk line connections of the short lines. As an illustration, the Long Bell interests have a mill at Lake Charles, Louisiana, and a mill at DeRidder, Louisiana, some 43 miles north of Lake Charles. The lumber originating at the Lake Charles mill is transported by the Louisiana and Pacific Railroad to DeRidder and there delivered to the Kansas City Southern, and the Louisiana and Pacific receives a division of 5½ cents. The lumber orginating at the Long Bell mill at De Ridder, the Louisiana and Pacific Railroad transports that lumber to Lake Charles and delivers it to the Southern Pacific Lines and receives a division of 5½ cents.

Where different divisions are allowed according to distance, the effect is that the industry ships via the trunk lines farthest distant, in order to secure the greatest divisions. (R. 777.)

The lumber situation evens itself up.

There are no other sulphur mines in Louisiana. If, as a result of greater divisions being allowed to Mossville, we are deprived of the sulphur business, or any part of it to which we are entitled by virtue of our ability to accord the proper transportation facilities, we would receive nothing to compensate us for that loss in business. (R. 777.) [fol. 288] I have prepared four exhibits showing that it is a fact that the short lines in our territory generally receive the same divisions via the short line junctions as the long line junctions. These exhibits consist of statements showing distances between the point on the short line to the trunk line connections, and showing that the divisions are the same, although the hauls to different trunk lines are substantially different.

Exhibits numbers 34, 35, 36 and 37 were received in evidence. (R. 778.)

Exhibit No. 34 shows distances from representative points on the Louisiana and Pacific Railroad to Lake Charles, on the Louisiana Western Railroad, and to Fulton, Louisiana, on the Gulf Coast Lines. On traffic from Newton, a point on the Louisiana and Pacific to Lake Charles, a distance of 4.3 miles, the same revenue is allowed the

Louisiana and Pacific as on traffic handled via Fulton, a distance of 13.9 miles. On shipments originating at Longville, Louisiana, handled to Lake Charles and there delivered to the Louisiana Western, which is a Southern Pacific line, a distance of 25.2 miles, the same divisions are allowed as when handled via Fulton, a distance of 7 miles.

Exhibit No. 35 shows the distance between points on the Texas Short Line Railroad and Grand Saline, Texas, the junction with the Texas and Pacific Railroad, also the distance to Alba, Texas, the junction with the M. K. & T. Railway of Texas. It shows that both of these lines allow the Texas Short Line Railroad the same proportions, which on carload traffic is generally six cents per 100 pounds, when from and to points in 33⅓ per cent territory, and 6.3 cents [fol. 289] *cents* from or to points in 35 per cent territory. The 33⅓ per cent territory is that territory to and from which rates were increased to that extent in accordance with Ex Parte 74, and the 35 per cent territory is that territory to and from which rates were increased to that extent. The haul varies considerably according to the junction point. For example, from Hoyt to Grand Saline, the distance is 9.3 miles, and from Hoyt to Alba, it is .7 of a mile, and the same proportions are allowed for both junctions.

Exhibit 36 shows the distance between points on the Sugarland Railway and junction points with connecting lines, and also shows that the various lines allow the Sugarland Railway the same proportions, irrespective of the junction via which the traffic moves. The traffic to or from Hermann on the Sugarland Railway via Sugarland and the Southern Pacific lines, the distance is 10.2 miles, or via Sugarland Junction and the Santa Fe, the distance is 1.1 miles, and the divisions are the same.

Exhibit No. 37 shows information with respect to the Red River and Gulf Railroad, which connects with the Southern Pacific lines at Lecompte, Louisiana, with the Rock Island Lines at Meridian, and with the Missouri Pacific at Longleaf. The divisions via the different junction points are the same, although the distances vary considerably. From Forest Hill on the Red River and Gulf to Longleaf, Louisiana, the distance is 3.8 miles; to Meridian, Louisiana, where connection is made with the Rock Island, the distance is 15.1 miles. (R. 780.)

With the exception of timber, I know of no exception to the rule that the divisions allowed are the same. If there is [fol. 290] a connection made between a short line and a trunk line, the trunk line realizes that it must meet the divisions allowed that short line by the other trunk line. They simply ascertain what those divisions are and proceed to allow the short line the same division, irrespective of the distance to the junction point.

In my judgment, obviously the proper method of handling the traffic is for the sulphur to be scaled by the initial line, the Brimstone. This is done for the purpose of securing the proper weight at which shipment should be billed and as affecting the basis for the assessment of freight charges.

The interchange tracks at the Southern Pacific interchange belong to and are kept up by the Southern Pacific Lines.

Shipments of sulphur from Sulphur Mine, Louisiana, off the Brimstone and its connections generally are not prepaid.

The present divisions have been affected by the Commission's rate order of 1922. The divisions in effect July 1, 1922, which were established by the Railroad Administration were reduced to the same extent as rates were reduced, that is, ten per cent. The various divisions in connection with the lines throughout Southwestern territory, to which I have referred in my testimony, were established by the Railroad Administration during the time the railroads were under government control.

In the exhibits filed, we took typical cases; as I stated, the conditions reflected in these exhibits prevail generally throughout the territory, and I merely picked out several representative lines *here* to illustrate the situation, some in Louisiana, and some in Texas. (R. 786.)

[fol. 291] V. V. Kirkpatrick, a witness for Respondent Brimstone Railroad and Canal Company, recalled, testified substantially as follows:

The cost of reproduction figures given in a previous exhibit were on higher figures than if based on present-day prices and conditions.

(Note L. The Examiner requested the witness to furnish his opinion as to present-day prices and conditions, to be filed after the hearing. This request was complied with.)

JOSEPH LALLANDE, a witness for the Southern Pacific, Respondent, recalled, testified substantially as follows:

I was asked with respect to the prepayment of shipments of sulphur destined to Sabine, Texas. I have learned that it is customary to prepay the freight charges on shipments of sulphur destined to Sabine (R. 788).

Cross-examination:

I have neither approved nor disapproved the divisions allowed in the Tap Line cases. Nothing was further from my mind than to approve the divisions allowed in the Tap Line cases as applicable to this case. I merely referred to the fact that these divisions had been prescribed. I do not offer that basis as a basis for determining this case.

I am in no way comparing the handling of sulphur to the handling of lumber; on the contrary, divisions prescribed on lumber in the Tap Line cases should not apply to the transportation of sulphur.

The short line does not control the rates. A short line [fol. 292] cannot make rates to interstate destinations without the concurrence and consent of its trunk line connections. The mileage from Sulphur Mine to the Southern Pacific would not control the allowance in this case. I have shown a number of instances where the same divisions were allowed the short lines, irrespective of the distances. In many instances, the distances to junction points of certain trunk lines were twice the distance to the junction points of other trunk lines, and the divisions were the same.

We have a track scale at Beaumont, on the Southern Pacific. Sulphur moving from Brimstone Junction over the Southern Pacific consigned to Sabine would move through Beaumont. Going east to New Orleans, the nearest track scale to Brimstone Junction is at Lake Charles, Louisiana, and there is one at Lafayette, Louisiana. In respect to the movement of this sulphur, it tended to economical trans-

portation as a whole from origin to destination for the sulphur to be weighed by the origin line.

I stated that the divisions accorded the Brimstone by the trunk lines were established by the Railroad Administration. They were put in effect by the Railroad Administration at the time Mr. Chambers was director of traffic of the Railroad Administration, in accordance with advice that he would approve the divisions.

There is no sulphur produced on the line of the Louisiana and Pacific Railway Company, the Louisiana Western, the Gulf Coast Line, or the Texas Short Line Railroad. I am not well informed as to the traffic conditions surrounding that railroad. The divisions allowed the Texas Short Line Railroad are allowed that railroad for handling traffic, but I am not familiar with the volume of traffic that moves over that road. I know that the volume of traffic that moves over the Sugarland Railway (shown on Exhibit 36) is quite [fol. 293] substantial. There is no sulphur produced on the Sugarland Railway. There is no sulphur produced on the Red River and Gulf. The Red River and Gulf Railroad handles lumber, sand and gravel, merchandise, and agricultural products (R. 799).

Mr. H. A. Weaver, General Freight Agent of the Kansas City Southern Railway, a witness for Respondents, testified substantially as follows:

This proceeding, as I understand it, was instituted for determining the costs and the Commission in their formal opinion said that the divisions should be based upon the cost plus a reasonable return. On that basis, the divisions should not be the same, under any conditions, on sulphur via Lockport Junction and Brimstone Junction. The divisions have been the same in the past, whether the sulphur was delivered to the Southern Pacific at Brimstone or the Kansas City Southern at Lockport Junction.

The statements submitted show that a large majority of the sulphur is drawn to the Southern Pacific rails. If the divisions are continued on a parity, it would tend to perpetuate that condition, under which the Kansas City Southern could not hope to participate in the traffic on a fair basis with the Southern Pacific. If the divisions are to

be fixed based upon the cost to the Brimstone to Lockport Junction, and the Brimstone receive the same fair net return on business which they deliver to the Kansas City Southern at Lockport Junction as they receive on business delivered to the Southern Pacific at Brimstone, we would have no objection. We are not seeking any advantage, but we do feel that we ought to be on a parity (R. 801).

In view of the testimony already in the record as to the [fol. 294] cost of making a delivery to the Kansas City Southern at Mossville and Lockport, which is around $19.00, I think that the present divisions allowed by the Kansas City Southern to the Brimstone are reasonable.

Cross-examination:

I stated that there should be a cost study, and the divisions should be based upon cost plus a reasonable return. If the cost study which has been made shows that it costs substantially more to handle business to the Kansas City Southern than to the Southern Pacific, and in fixing the divisions the two operations to the Kansas City Southern and the Southern Pacific are to be considered as one, naturally the divisions to be allowed the Brimstone will be limited, and that allowance would have to be something more than the actual cost of handling the business to the Southern Pacific and probably something less than the actual cost of handling the business to the Kansas City Southern (R. 803). In other words, to the extent that the increased cost and service to the Kansas City Southern would bring up the cost, to that extent, it would increase the division to the Southern Pacific.

If you are going to fix the divisions, a reasonable division based upon the cost plus a reasonable return to the two trunk line carriers, I think that each portion should be treated separately. I do not recall any particular line that has different divisions.

I came to this hearing under the impression that that was to be confined strictly to determining what the cost plus a reasonable return was. I did not intend to testify in this case, but in connection with these short lines that have been submitted here, possibly with the exception of the Sugarland Railway, I do not know of any line where [fol. 295] there is any interest relation between the largest

industry on their line and the railroad. Take a railroad, for instance, like the Louisiana and Pacific, which serves the Long Bell mills. There are a great many other independent industries that are also served by the Louisiana and Pacific. These shippers, possibly other than the Long Bell Lumber Company, have no interest in the divisions to be allowed the short line. They do not care whether the division for the haul for thirty miles is 20 cents per hundred pounds, or whether it is 25 cents per hundred pounds. They control the business, and they can specify the route, so long as the routing is open, which routing will be followed.

I think it would make a difference, in so far as the reasonableness of the division is concerned, what the interest of the shipper in the short line is. In other words, I should think this, that if there is a relation between the shipper and the railroad, especially if it meant that the business would have to be handled to one junction at a loss, and to the other junction at a profit (R. 805).

Cross examination:

I know the Long Bell has certain industries that are located at Lake Charles, De Ridder, and there are also other industries that are equally as important at Lake Charles which have no connection whatever with the Louisiana and Pacific Railroad. In my opinion, where the industry has an interest in the tap line and the divisions of the tap line are different to different connections of the trunk lines, naturally that industry would be interested in routing that traffic via the junction where the operating costs would be [fol. 296] the least and where they would earn the most net revenue. If the proportion to be allowed the Brimstone Railroad to the Kansas City Southern connection was based in the same manner as the proportion allowed the Brimstone for delivery to the Southern Pacific, I would say there would be no advantage, if the divisions were based on actual cost, that the Brimstone Railroad would receive a larger net revenue there than to the Kansas City Southern where the cost would be greater. (R. 807.)

Redirect examination:

If the divisions in this case were fixed on the basis of cost for delivery to either of the trunk lines based on the

bare cost, I would route the traffic to the nearest connection with the trunk line. If the divisions to both connections were the same, that is, based on cost plus a reasonable return, my testimony would be the same.

Mr. B. P. Elmore, Statistical Analyst, Bureau of Statistics, Interstate Commerce Commission, testified on behalf of the Commission substantially as follows:

I have been employed in my present position with the Interstate Commerce Commission since February, 1922. Prior to that for eight years I was employed by the Interstate Commerce Commission as civil engineer in the Bureau of Valuation. Previous to that I was for nearly twelve years an engineer on the Virginian Railway, most of which time I was assistant chief engineer. Before that I had had experience in location, construction, and maintenance on several railroads, among them being the Southern Railway, Seaboard Airline, New York Central, Chesapeake and [fol. 297] Ohio, and Baltimore and Ohio.

I was sent by the Commission to Sulphur Mine to meet representatives of the three respondent companies to confer as to the best means of making these cost studies. I was joined at Sulphur Mine by Mr. Kearnes, a representative of the Bureau of Accounts of the Commission, and together we meet the representatives of these three companies at Sulphur Mine on May 23, and we remained in conference with them for two days, May 23rd and 24th, during which time the best methods were discussed for making these studies and for making these tests.

We considered at that time carefully all of the conditions surrounding the making of the cost studies. The fact was developed that the traffic at that time was unusually heavy, and I believe particularly heavy to the Southern Pacific.

The cost study made by respondents in this case purports to show the cost per car for handling loaded cars over the railroad of the Brimstone Railroad and Canal Company between Sulphur Mine, Louisiana, and the connections with the Southern Pacific and the Kansas City Southern Railroads, a distance of 0.75 mile and 6.64 miles

respectively. The cost per car is based upon the total engine hour cost involved in the interchange with each connection divided by the number of loaded cars handled. The average time consumed handling a loaded car to each connection is based upon a seven day test. The cost per engine hour as determined by the cost study of the respondent companies is based upon the Brimstone's operating expenses and taxes for the calendar year 1921, adjusted to include estimated charges for the use of yard tracks and other facilities owned by the Union Sulphur Company, as well [fol. 298] as certain services furnished by that company, and upon a six per cent return on the estimated cost of reproduction new of the Brimstone property as of December 31, 1921, including working capital, materials and supplies, and 16 miles of right of way.

The total cost per car as derived from these factors is shown by Exhibit No. 30 of the cost study to be $7.62 for cars interchanged with the Southern Pacific, $24.94 for cars interchanged with the Kansas City Southern, and an average of $9.04 per car for all cars interchanged, regardless of the connection with which the interchange is made.

The total number of loaded cars handled during the seven day test period and how divided between the connecting roads, contrasted with a seven day average for the year 1921, the five year period ended December 31, 1921, and the five months period ended May 31, 1922, is shown below:

Number of loaded cars interchanged during various periods equated to a seven day average for comparison with the number interchanged during the seven day test period, May 26—June 1, 1922.

Period	Loaded cars interchanged		
	With Southern Pacific	With Kansas City Southern	Total number interchanged
Calendar year 1921	280	36	316
Five year period ended December 31, 1921	316	44	360
Five months' period ended May 31, 1922	326	40	365
Test period (May 31 June 1, 1922)	447	40	487

[fol. 299] In connection with the preceding statement it will be noted that not only was the movement unusually heavy during the test period, but the proportion of cars interchanged with the Southern Pacific was much larger than is ordinarily the case. In the light of these figures it can not be said that the seven day test period was representative or even approximately representative of ordinary or average conditions, and this should be kept in mind in considering the results of the cost study.

The cost per car is very greatly affected by the number of cars handled. This may be readily illustrated by reference to Cost Study Exhibit No. 26. On May 27th, 2 cars were interchanged with the Kansas City Southern, requiring 59 minutes engine time. On May 29th, 18 cars were interchanged requiring only 61 minutes. The engine hour cost being the same in each case and the time consumed being substantially the same, the cost per car handled is nearly nine times as great in the first instance as the cost per car in the second instance, by reason of the much smaller number of cars handled.

As the freight movement was abnormally heavy during the seven day test period it can not be assumed that the resulting costs per car are representative of the normal or average costs.

At a conference between representatives of the Commission and of the three Respondent Companies at Sulphur Mine some two or three days before the test, it was the general view that the heavy traffic movement then under way would make the cost per car, derived from a limited test period, of doubtful value as being representative of average costs. It was generally agreed at that time that the only really trustworthy cost figure which could be de- [fol. 300] rived from a cost study was the average cost per loaded car handled during 1921 without regard to the connection to or from which it moved. It was obvious that the cost per car to either connection based upon the traffic handled during a limited test period would be of little value, if the volume of traffic or its division between the connecting roads was subsequently changed. However, it was deemed proper by all concerned in the conference to make a test, as the Commission's order in this case was interpreted by some as requiring this to be done as a part of

the cost study. It was agreed that the cost study should show two things, (1) the average cost per car of all loaded cars handled during 1921, regardless of the connecting road with which they were interchanged, and (2) the average cost per car interchanged with the Southern Pacific and Kansas City Southern based upon the time consumed as shown by the test.

The cost per car to the Kansas City Southern connection is very much greater than to the Southern Pacific, due in the main to the small number of cars handled and in part to an erroneous apportionment of charges between the two connections. During the test period 40 cars were interchanged with the Kansas City Southern, the interchange taking place on four different days. Had it been practicable to have handled these 40 cars in one train or even two trains instead of four, the engine hours would have been only one-fourth or one-half as much, and the cost per car would in consequence have been very greatly reduced:

Before proceeding with an analysis of the respondents' cost study for the purpose of adjusting and revising certain charges involved in the cost of service, and restating [fol. 301] the resulting unit costs, it is desirable to consider these matters in turn and indicate the disposition to be made of each.

(1) The formula used in dividing the operating expenses between the three zones is in accord with the principles agreed upon at the conference May 23 and 24 between representatives of the Commission and those of the Brimstone Railroad and Canal Company and its connections, but is considered to be in error to the extent of apportioning a part of Freight Train Car Repairs, Depreciation and Retirements to the Kansas City Southern zone, as the freight train cars owned by the Brimstone Railroad and Canal Company are used solely in the interchange with the Southern Pacific. The maintenance of equipment expenses in connection with these cars should therefore be assigned direct to the Southern Pacific zone, or if assigned to expenses common to all three zones in the first instance, they should be thereafter deducted and assigned to the Southern Pacific zone before making the apportionment of common expenses between the three zones.

(2) The mileage of tracks of the Union Sulphur Company used by the Brimstone, colored in blue on the map (Exhibit No. 25 of Cost Study), and aggregating 2.76 miles as shown by the details in Exhibit No. 27, is believed to be in error in the following respects:

(a) The track shown in blue on the map between T and U, 2,901 feet in length, is not believed to be necessary to the common carrier operations of the Brimstone Railroad and Canal Company and has therefore been excluded from consideration in the analysis of costs.

[fol. 362] (3) The ratio of 1½ mile to 1 mile for the expense of maintaining the tracks of the Sulphur Company shown in blue on the map can not be accepted as correct unless it can be shown that such is the case. All of these tracks are ordinary yard tracks, a considerable portion of them being used for storage purposes. While the greater portion of the tracks colored in blue (after excluding track T U) by reason of their use as switching leads and connections with the Brimstone, admittedly are used to a larger extent than other tracks of the Sulphur Company, the remainder are used for storing cars where the proportion of maintenance is ordinarily less than the average. It is believed that the average cost of $2,319.18 per mile for maintaining all permanent tracks in the Sulphur Company's yard, which is very high, is a sufficient allowance for the maintenance cost of the tracks shown in blue.

(4) The estimate of 90 per cent use by the Brimstone of the tracks colored in blue seems excessive. These are the principal thoroughfare, storage and switching tracks of the Sulphur Company and afford communication between various parts of the plant operations. Excluding track T U, which is not believed to be necessary for the use of the Brimstone in performing its common carrier operation, the principal use made of the track from H to C is undoubtedly by the Sulphur Company in the moving empties from the storage tracks to the Sulphur loading tracks and returning them after they are loaded. This is believed to be clearly plant switching and not common carrier service. If sufficient tracks were provided by the Sulphur Company at the loading pit or nearby, to take care of the empties and loads [fol. 363] incident to a day's work, it would seem to be a

proper service upon the part of the railroad to set in the empties on such tracks and remove the loads. In the absence of proper holding tracks at the loading pit for a day's work, delivery of empty Sulphur cars and removal of loads by the Brimstone is made on storage yard tracks located at perhaps from ¼ to ½ mile distant. In view of the conditions which exist it is believed that the switching of empties and loads between the storage yard tracks and the loading pit is not a common carrier service. As a matter of fact the switching of empties and loads between the storage yard and the Sulphur loading pit it done very largely, if not entirely, by the Sulphur Company engine. An estimation of the detail record of the work done by the Sulphur Company engine during the test period apparently indicates that most of the time charged to common carrier service performed for the Brimstone includes time spent in handling empties and loads between the storage yard and the loading pit. Incidentally, this engine did other work for the Brimstone, which the Brimstone should have done for itself. The point as to whether this switching between storage yard and pit is properly a common carrier service in this case is of importance, as it involves not only the greater part of the time of the Sulphur Company engine charged in the cost study to common carrier service for the Brimstone, but also involves the Brimstone's proportion for maintenance and rental of tracks.

In view of the doubt which exists as to whether this switching is or is not a common carrier service, it seems best for the purpose of analyzing and revising the Respondents' cost study hereinafter, to exclude the entire [fol. 304] time of the Sulphur Company engine, leaving it to be hereafter determined whether the whole or any part of this time should be included in the Brimstone's cost of service.

As the tracks shown in blue (exclusive of track T U) are joint tracks, it would seem that the use of these tracks which might be fairly divided on the basis of the number of engines owned by each company, which is shown by the record to be three in the case of the Brimstone, and seven in the case of the Sulphur Company. On this basis the Brimstone's proportion of use would be 30 per cent,

but as 35 per cent has been determined to be a fair percentage of use in the case of the tracks colored in green on the map, which percentage is believed to be reasonable, this percentage will also be used for he tracks colored in blue. Maintenance, interest, rental and taxes will be divided on this basis in revising and restating cost hereinafter.

(5) Certain operating expense accounts of the Brimstone for the year 1921 have been adjusted for the purpose of the Respondents' cost study to include several additional charges. These will be referred to in detail and their inclusion or exclusion indicated in connection with the analysis of the Respondents' cost study.

(a) As the present charges for supervisory officials and office rent are very heavy for a small road of this character on account of maintaining two general offices, the following proposed additions for the year 1921 shown in Cost Study Exhibit 27 will be excluded for the purpose of analyzing cost of service:—

Mr. Barrow: Pardon me a moment, in order that I may understand this. Are you stating such items that you have [fol. 305] eliminated in your analysis?

The Witness: Yes, sir, I am enumerating the items I have excluded but which have been included in the Respondents' Cost Study.

Mr. Barrow: All right.

Proposed additions excluded

	Salary	Office rent
President	$801 36	$300 00
Chief Engineer	900 00	300 00
Bookkeeper	1,129 92	150 00
Stenographer	750 00	150 00
Timekeeper	600 00	
	$4,181 28	$900 00

Total proposed additions—salary and rents—excluded, $5,081.28.

The following proposed additions for 1921 for wages of other employees and for rents will be included:

Proposed additions included

	Salary	Rent
Warehouse man	$480.00	.....
Labor drying sand for engines	489.60	.....
Rent of station and agent's office		240.00
	$969.60	$240.00

Total proposed additions—wages and rents—included, $1,209.60.

(b) The following additional charges covering items furnished by the Sulphur Company will be included in the restatement of charges involved in the cost of service:

[fol. 306] Charges for water furnished $600.00
Additional charges for fuel oil, on account of handling costs and use of fuel station facilities .. 1,107.50
Rental of enginehouse and facilities, 12 months at $100 ..... 1,200.00
$2,907.50

(c) Charges for the use of the Sulphur Company engine, aggregating $3,075.55, will be excluded, as heretofore indicated, on account of the doubt as to what part, if any, of this expense was incurred on account of common carrier services performed for the Brimstone. It is believed, however, that it is proper to include some part of these charges, but what that part is can not be clearly determined from the detail work record, and it seems best for present convenience to exclude the entire amount, so that whatever proportion may be allowed ultimately can be added without unnecessary labor in making the adjustment.

(d) The cost of maintaining 8.01 miles of the Sulphur Company's permanent tracks during 1921 is shown by Cost Exhibit No. 27, to have been $18,576.67, which is an average of $2,319.18 per mile.

Excluding track T U of the Sulphur Company's tracks as not being used in common carrier service, the total trackage of the Sulphur Company tracks shown in blue then becomes 11,682 feet, or	2.21 miles
Tracks colored in green aggregate 5,812 feet, or	1.10 "
Total Sulphur Company tracks used by Brimstone	3.31 "

In accordance with what has preceded the percentage [fol. 307] of use of all of these tracks by the Brimstone is placed at 35 per cent.

Maintenance cost 3.31 miles at $2,319.18	$7,676.49
Brimstone proportion of maintenance, 35 per cent	$2,686.77

(6) The respondents in their cost study have adopted the estimated cost of reproduction new of the Brimstone Railroad and Canal Company property as of the year 1920, plus additions and betterments to December 31, 1921, plus working capital and materials and supplies, plus non-carrier property consisting of 16 miles of canal right of way, all of which aggregate $834,046.00, as the value of the owned property upon which the Brimstone is entitled to earn a 6 per cent return, which amounts to $50,042.76.

In like manner the cost of reproduction new as of December 31, 1921, is used by the respondents as the basis for determining the interest rental of the Brimstone for the use of the tracks of the Sulphur Company shown in blue and green on the map. The aggregate cost so determined for 3.881 miles of these yard tracks is $112,046.00.

This is not in accordance with the order of the Commission in this case, dated April 4, 1922, wherein it was said:

"In compiling the necessary cost figures the factors outlined by us in Chicago, West Pullman and Southern Railroad Company, case 37 I. C. C. 408, should be taken into consideration so far as applicable."

The principle laid down in that case (37 I. C. C. page 415) was as follows:

"From its entire business the industrial line should not earn more than a fair return on the property devoted to

[fol. 308] the public use, less reserve for accrued depreciation, and including materials and supplies in the investment."

The Commission has not yet completed its valuation of the property of the Brimstone Railroad & Canal Company, so that these figures are not available for use in this case.

The Brimstone Railroad & Canal Company's investment in road and equipment and in materials and supplies as of December 31, 1921, together with the reserves for accrued depreciation, taken from the annual report to the Commission for calendar year ended December 31, 1921, are as follows:

Investment:		
Road		$126,490 26
Equipment		392,616 68
General Expenditures		85 50
		519,192 44
Materials and supplies, December 31, 1921		3,794 87
Total investment in road and equipment, including materials and supplies		522,987 31
Reserves for accrued depreciation:		
Road	$21,330 80	
Equipment	91,986 42	
		113,317 22
Total investment in road and equipment and materials and supplies, less reserves for accrued depreciation December 31, 1921		409,670 09
5¾ per cent on above amount		23,556 03
Amount of above return equated to test period		451 76

The return upon the Brimstone's investment is appor- [fol. 309] tioned in the cost analysis which follows to the three zones in the same proportion as in the respondents' cost study, except that in the return upon the investment in freight train cars is allocated to the Southern Pacific

zone, since these cars are used exclusively in the interchange with that road.

The investment of the Union Sulphur Company in the yard tracks used by the Brimstone, as the basis for a fair interest rental, is not known and can only be approximated. The Brimstone's investment in road, embracing 9.23 miles of all tracks, is $126,490.26, less accrued depreciation—road $21,330.80, leaving net $105,159.46, or an average of $11,393.22 per mile of all tracks. As the general character of the construction of the Brimstone's railroad is substantially the same as that of the Sulphur Company's railroad, on account of the flat character of the country, and as the Brimstone's railroad is in effect little more than an extension of the Sulphur Company's yard tracks to reach two connecting lines, there would seem to be considerable warrant, in the absence of a more exact figure, for applying the average net investment per mile of $11,393.22 to the 3.31 miles of Sulphur Company tracks in order to ascertain the approximate fair value as a basis for determining a reasonable interest rental for the use of these tracks by the Brimstone.

On this basis the approximate value of the Sulphur Company's tracks used by the Brimstone would be as follows:

3.31 miles yard tracks at $11,393.22	$37,711 56
Materials and supplies (from respondents' cost [fol. 310] study)	6,297 00
Total	44,008 56
Interest rental on above amount at 6%	2,640 51
Brimstone's proportion 35%	924 18

The estimated taxes for the year 1921 upon the Sulphur Company's tracks used by the Brimstone are shown by the respondents' cost study to aggregate $78.01, which have been apportioned 35 per cent to the Brimstone, amounting to $27.30.

(7) In the respondents' cost study in computing the return to the Brimstone upon the estimated cost of reproducing the property as of December 31, 1921, no deduction was made for the rentals received for the use of the Brimstone's cars in excess of that paid to foreign roads.

In "Class rates from Chestnut Ridge Railway Stations" 50 I. C. C. 152, the Commission authorized inclusion in the cost of service of per diem paid to foreign roads.

It therefore follows that credits received for the use of equipment should be deducted in computing the return upon the investment. The debits for the calendar year 1921 for the per diem rentals aggregated $7,475.48, as against an aggregate credit of $16,987.28, leaving a net credit of $9,511.80, which amount will hereafter be deducted from the computed return upon the carriers investment.

The summary of engine hours and cars handled should be adjusted to exclude the time of the Sulphur Company engine, to which reference has heretofore been made. Some part of the time of this engine should be included, but the proportion can not be clearly determined from the detail time sheets. It therefore seems best as a matter of [fol. 311] temporary expediency to exclude it all, so that whatever proportion may hereafter be determined upon as proper to include may be added without further adjustment.

As corrected to exclude the time of the Sulphur Company engine these totals will then become

Zone	Total		Average minutes per car
	Cars	Minutes	
Common zone	487	2,211	4 5400
Southern Pacific zone	447	377	8434
Kansas City Southern zone	40	292	7 3000
	487	2,880	5.9137 (R. 815 830)

Exhibit No. 38, consisting of one sheet, reflecting the result of the study made by Mr. Elmore, was received in evidence. This exhibit is a restatement of the figures shown in respondents' cost study adjusted to take into account the things which I have already referred to that I consider should be included or excluded.

Exhibit No. 39 is merely a bringing together of the various elements that make up the total cost per engine hour, and it shows the process which was gone through in arriving at these costs. (R. 830 832)

I do not know that any particular reference is further needed to Respondents' Exhibit No. 29, which covers the cost of reproduction new of the Brimstone and also of the track of the Union Sulphur Company which was used by the Brimstone.

Cost Study Exhibit No. 30 made by the respondents' recapitulates the basic figures found in other exhibits of the cost study made by the respondents, and by the use of such [fol. 312] figures purports to derive the cost per loaded car handled in each of the three zones, the cost per loaded car interchanged with the Southern Pacific and with the Kansas City Southern, and the average cost per loaded car handled irrespective of the road with which the interchange is made. It shows in detail for each of the three zones, for the connections with each road, and for the road as a whole, the following information:

Number of cars handled in each zone, number interchanged with each connecting road, total minutes consumed in each case, average number of minutes consumed per car handled, cost per engine hour, aggregate cost, and average cost per car, both excluding and including the return on investment.

In order to compare the effect of the revised engine hour costs, as developed in this analysis, upon the average cost per car in each zone and to each connection, with the corresponding costs shown in the respondents' cost study Exhibit No. 30 two tables have been prepared showing the total cost per car including return on investment, the first table containing the respondents' cost figures, and the second table containing the revised costs developed in this analysis. Both sets of figures are based on the number of cars handled during the test period to which is applied, the engine hour cost derived from the 1921 operating expenses, including taxes and adjustments, and the return on investment.

Average cost per loaded car, including operating expenses, taxes, adjustments and return on investment, as shown by respondents' cost study Exhibit No. 30, is as follows:

[fol. 313]

Average cost per loaded car based on respondents' cost study

Cars interchanged with	Total number of cars handled	Common zone	S. P. Co. zone	K. C. S. zone	Total
Southern Pacific Co.	147	$6.7708	.....	.....	.....

By Mr. Barrow:

Q. Is that with or without the return?

The Witness: This is with the return.

Southern Pacific Co.	147	$6.7708	$0.8402	*	$7.6168
Kansas City Southern	40	6.7708	.....	$18.1088	24.9204
Total	187	6.7708	0.8402	18.1088	9.6284

*Average cost per loaded car, including operating expenses, taxes, adjustments and return on investment, these being the revised costs as developed in this analysis.

Average cost per loaded car based on the revised costs developed in this analysis

Cars interchanged with	Total number of cars handled	Common zone	S. P. Co. zone	K. C. S. zone	Total
Southern Pacific Company	147	$2.727	$3.420		$6.147
Kansas City Southern	40	2.727		$12.639	15.366
Total	187	2.727	3.420	12.639	6.804

The difference between the average costs per car shown in these two tables for cars interchanged with the Southern Pacific, cars interchanged with the Kansas City Southern, [fol. 314] and for all cars interchanged without regard to the connection with which the interchange is made, arises from two things (1) the difference in the average engine hour cost as developed in the cost study and in this analysis, due to difference in some of the factors making up this average cost, and (2) also from a further difference in the engine hour cost in each zone, due mainly to the different allocation to zones of the repairs, depreciation and retirement of freight train cars, and also of the return on the investment in these cars.

It is not believed that either of these sets of figures can be relied upon as reflecting the proper average cost per car

to the two connections or for the road as a whole, for two reasons.

(1) The record of cars handled is based on a seven day test made during a period when the traffic was much larger than the seven day average for the past five years, or for the first five months of 1922. To the average time consumed per car as determined from the test (May 26 to June 1, 1922, inclusive) is applied an engine hour cost based upon the calendar year 1921. The resulting cost per car thus derived under these circumstances could hardly be expected to have a trustworthy status as the measure of average cost in 1921, or in any other period of less or greater traffic than the test period.

(2) Any variation in the total number of cars handled, or in the relative number handled in any zone, will of necessity affect the average cost per car. If the number of cars averages the same as that handled during the test period, but they are differently divided between the two connections, the average cost per car interchanged with each of the connections will be materially changed. The [fol. 315] average costs per car are based upon a number of factors a change in any one of which will necessarily affect the result.

The only really trustworthy cost figures which it is believed can be derived from a cost study is the average cost per loaded car handled during the calendar year 1921, without regard to the connection to or from which it is moved, this figure to be obtained by dividing total costs, properly adjusted, by total loaded cars handled. This was the general view of all or nearly all of those present at the conference at Sulphur Mine on May 23rd and 24th, 1922, between representatives of the Commission and the respondent carriers to agree upon the methods for making the cost study. However, this average cost figure apparently is not shown in the cost study exhibits, but may be derived therefrom.

The average cost per loaded car handled during the year 1921, based on the total operating expenses, taxes, adjustments, and return on value of property, as developed in the respondents' cost study, divided by the total number of loaded cars handled regardless of the road with which interchanged, is $13.93.

The cost corresponding with the above for the test period based upon 1921 engine hour cost, as shown by Cost Exhibit No. 30, is $9.04.

The difference between these two costs per car is due to the difference in the number of cars handled, the seven day average in 1921 being 316 as compared with 487 during the seven day test period.

The average costs per loaded car corresponding with the foregoing, based upon the revised and modified costs here-
[fol. 316] tofore developed in this analysis of the respondents' cost study are as follows:

Average cost per loaded car for calendar year 1921	$10 64
Average cost per loaded car for seven day test period	6 90

It was thought by some at the conference at Sulphur Mine, heretofore referred to, that the relative costs per car to the two connections, as derived from the test and the cost study, might possibly afford a reasonable basis for factoring the average cost per car of all cars handled during the calendar year 1921, in the event the Commission should decide to establish different divisions to these connections. However, these studies clearly show that such a basis for affecting a division would be of little value unless the business to the two connections should continue to be divided in the future as it was during the test. Figures have heretofore been complied herein showing how the interchange movement was divided in various periods including the test period. An examination of these shows that the movement between the Southern Pacific connection was much greater in proportion during the test period than at any other time. If in the future the movement between the Kansas City Southern connection should be increased and that to the Southern Pacific decreased, the effect would be to decrease the cost per car to the former and increase it to the latter.

The only basic figure which can be derived from the study that is trustworthy is believed to be average cost per car interchanged during the calendar year 1921 without regard to the connection with which interchanged. The reliability of this figure is predicated of course upon that assumption [fol. 317] that the Brimstone's operating expenses can be properly adjusted to include fair and reasonable charges

for the services and the use of the facilities now furnished by the Sulphur Company, and a reasonable value placed upon the carrier property upon which the Brimstone is entitled to earn a return.

In attempting in this analysis to adjust the Brimstone's operating expenses for the calendar year 1921 to include the use of the facilities and services furnished by the Sulphur Company, it was necessary to deal with some of these as well as other matters in a tentative way.

Cost Study Exhibit No. 31.

This exhibit is interesting mainly as showing the increased costs per car which result when the engine hours and engine hour costs remain constant but the number of cars is decreased. It is illogical, however, to assume that some reduction can not be affected in engine hour time on account of the decreased car movements and in these computations it would seem that it should have been effected by dispensing with the services of the Sulphur Company engine.

These computations are not believed to be of sufficient significance to warrant taking time to make detail comparison on the basis of the revised and modified cost figures heretofore developed in this analysis.

Cost Study Exhibit No. 32.

This exhibit is based on the total engine hours and total cars handled during the test period, but the engine hour cost is based on average operating expenses for the five years ended December 31, 1921, and adjustments for the [fol. 318] year 1921. These figures merely reflect the effect of a slightly reduced engine hour cost on the average cost per car and are not believed to be of sufficient significance to require comment. (R. 833-839.)

Cross-examination:

The exhibits filed and statements made by the witness were not submitted to the Commission previous to the hearing, and no conference was had with any other parties, either connected with the Commission or not connected with the Commission, concerning the cost studies submitted today. I had a conference with Mr. Keene, the examiner.

I did not find any criticism particularly of the test method, except that it was too short. It so happened that within that period the amount of traffic was abnormally large. The order of the Commission was to make this test within a certain length of time, and at that time it was necessary to take prompt action in order to comply and complete them within the allotted period. I have not any fault to find with the formula used. The only thing which I called attention to is the allocation of equipment to a common expense instead of to a special zone. Those criticisms could only have been made after seeing the result, and it is the result which is criticized, and not the method used. The Commission, as I understand it, has never adopted the reproducing (cost) track new as a basis for the computed return.

"Q. Well, that is true. I am not asking about whether the Commission has adopted that, but I mean in finding any specific value, whether that value is the cost of production new, or whether it is the cost of production new less depreciation, if the figures in that valuation are the figures which are used by the Commission as the basic figure for finding [fol. 319] valuation, you would not have any criticism to make of that method?

"A. If I understand you right, no.

"Q. If the Commission were to find the valuation of the Brimstone Railroad and Canal Company in their final report and order in the valuation docket, to be what is claimed in this record by the Respondents as the fair property valuation, would you say that would be a valuation upon which they are entitled to a fair return?

"Exam. Keene: You refer to the final valuation now?

"Mr. Barrow: Yes, the final valuation I am speaking of." (R. 843-844.)

I am only familiar with the manner in which the traffic is handled over the track scale of the Brimstone Railroad to the extent of having seen it and inquired about it, and the matter was discussed between us, and to that extent I am familiar with it.

"Q. Have you any objection to stating in the record whether you consider the operation of the Brimstone Rail-

road in the manner it is now operated over the track scales, a common carrier operation which is now being operated in an economical and proper manner?

"A. As I view it, it is."

My statement goes to the question of its being an economical operation, and not to the question of its being or not being a common carrier.

I do not consider there is any back haul to the scale. I consider that the motion that is given there is the necessary motion.

"Q. You are of that opinion notwithstanding the Com- [fol. 320] mission found in this case, 68 I. C. C. 375, to the contrary?

"A. Well, the Commission stated that fact, but I do not think that they stated it through a full knowledge of what the conditions are; and furthermore, the Commission ordered, as I understood it, the cost of service to be determined. Now the movement of those cars over the scales for the purpose of weighing them, as I understand it, is a necessary part of the cost service whether it means moving them forward or moving them backward. I do not know anything about the necessity for the thing at all, but as a matter of common practice that is the custom to weigh the cars at the point of origin. I do not mean to say that cars are not weighed en route, because in some instances there are no track scales available at the point of origin by which they can be weighed."

The weighing of the cars is for the purpose of determining the weights for freight charges.

(Note.—At the request of the Examiner, the Brimstone Railroad and Canal Company, Respondent, filed, after the hearing, the detail records of the work done by the Sulphur Company's engines for the Brimstone, and a statement of the inbound and outbound tonnage for the year 1921, and separately for the first six months of 1922.)

The testimony in the second hearing embraces 331 typewritten pages, and included 21 exhibits, numbered 24 to 44, inclusive.

[fol. 321] Abstract of the Evidence Taken at the Hearing Held at New Orleans, Louisiana, May 4th and 5th, 1925

By order of May 5, 1924, the proceedings before the Commission in Docket 12,969, divicions received by the Brimstone Railroad and Canal Company, were reopened for the purpose of conducting a cost study by the Interstate Commerce Commission, and for such further hearing as the Commission might thereafter direct. The hearing held at New Orleans on May 4 and 5, 1925, was the result of the order of the Commission setting the case for further hearing to determine the cost of service performed by the Brimstone Railroad and Canal Company.

Prior to this hearing, the Brimstone Railroad and Canal Company filed with the Interstate Commerce Commission exceptions to its jurisdiction and power to make the divisions to be prescribed for the Brimstone Railroad and Canal Company retroactive, and all rights under that exception were reserved. (R. 969 970.)

B. P. Elmore, Statistical Analyst for the Interstate Commerce Commission, testified:

In compliance with the order of the Commission, a cost study was made, based on the expenses of the Brimstone for the calendar year 1923, as reflected on their books, but modified and adjusted to include and exclude certain items that seemed to distort the expenses for that year. These items consist generally of excessive charges for maintenance of joint yard tracks; erroneous charges due to improper accounting, lap over expenses applicable to other years, properly audited but not properly a part of the [fol. 322] necessary expenses of 1923; part of the traffic and general expenses deemed to be unnecessary to the efficient and economical operation of the property and expenses incurred in performing intraplant switching for which no charge was made.

As a part of the cost study, a seven day test, May 21 to 27, 1924, was made of the work performed by the Brimstone locomotives through the cooperation of the Brim-

stone and the two respondent railroads associated with it in this case. The purpose of this record was to ascertain the character and extent of the work performed by the Brimstone locomotives and the average time consumed in handling cars in various operations. For the purpose of the test the tracks used by the Brimstone were divided into five movement zones. (Rec. 974-975.)

Exhibit A-1, Witness Elmore, was received in evidence. This exhibit consists of a map of the Brimstone, showing tracks operated, connections with other roads and movement zones established in connection with the test of May 21 to 27. These zones were established by agreement between representatives of the Commission and of the respondents. (Rec. 975-976.)

Zone 1 is designated as the Yard Zone, and embraces certain yard tracks at the Sulphur Mine plant of the Union Sulphur Company, which were colored in blue and green on the map. These tracks are owned by the Union Sulphur Company, and are jointly used by that company and the Brimstone. They are used by the Union Sulphur Company in connection with its plant operations and by the Brimstone in the performance of its common carrier service as well as certain intraplant switching for the Union Sulphur Company in connection with the loading of sulphur, which prior to January 1, 1923, that company performed for itself with its own locomotives. The tracks colored in [fol. 323] blue, aggregating 2.76 miles, were leased to the Brimstone on January 1, 1923, the lease also providing for the use by the Brimstone without additional compensation of the tracks colored in green, aggregating about 1.12 miles, for the purpose of reaching the fuel oil station, water station, freight warehouse, enginehouse and repair tracks of the Union Sulphur Company which it also uses.

Zone 2 is the Southern Pacific zone, and embraces the tracks extending from the south end of the Yard Zone, at the junction with the Brimstone main track, to the Southern Pacific connection at Brimstone Junction, including the interchange tracks of the latter at that point.

Zone 3 is the Scale Zone, and embraces the scale track located alongside the main track opposite the sulphur plant, together with a short portion of the main track connecting the south end of the Yard Zone with the scale track. This short portion of main track is also included in zone 4.

Zone 4, the K. C. S. running zone, is the main track running zone alongside the scale track, and extends from the south end of the yard zone to the east end of the yard zone. It embraces a small portion of main track, which is also included in zone 3. This zone is used in all movements between the south end of the Yard Zone and the Kansas City Southern connection, and also in certain movements between the northeast end of the Yard Zone and the Southern Pacific connection.

Zone 5, the Kansas City Southern connection, embraces the tracks extending from the junction of the main track and yard tracks, at the northeast end of the Yard Zone and K. C. S. Running Zone, to the connection with the Kansas City Southern at Mossville and Lockport Junction, [fol. 324] including the interchange tracks of the Brimstone and the Kansas City Southern at both of those points. (Rec. 976-978.)

I have prepared an exhibit showing the detailed working of the 7 day test of May, 1924, of the work performed by the Brimstone's locomotives, showing the time consumed in each operation and number of cars handled, with summaries of results showing total time consumed in each movement zone, number of loaded cars handled and average time per load car consumed in each zone and interchange with connecting carriers. (Rec. 978-979.)

Exhibit A-2, Witness Elmore, was received in evidence.

During the test, two locomotives were operated by the Brimstone, one a large locomotive of the 0-6-0 type with tender, tractive power about 35,100 pounds, and the other a small locomotive of the 0-4-0 type with saddle tank, tractive power about 15,910 pounds.

The work performed by the large locomotive consisted of road haul work and switching outside of the Yard Zone, handling loads and empties to and from the Yard Zone, as well as a certain amount of switching in that zone. As no sulphur is loaded on Sunday, the large locomotive does not work on that day. (Rec. 980-981.)

The work of the small yard locomotive consists principally of intraplant switching with only a small amount of carrier switching. Its operations are confined to the Yard zone except on Sunday, when, in the absence of the

large locomotive, it also performs such outside switching as may be assigned to it.

The Brimstone furnished three men to keep the records during the test. One man rode the large locomotive and kept a record of the time the locomotive left and entered each zone, number of cars taken in and out; another man [fol. 325] rode the small yard locomotive and kept a record by zones of each switching operation performed; while a third man kept a record of the initials and car numbers of the loaded and empty cars handled, showing the points from and to which they moved each day in carrier service during the test. This record constitutes the basis for tracing the movements of the loaded and empty cars through each zone.

Upon the completion of the test a summary was made of the operations of both locomotives during each day of the test, showing the time consumed in intraplant switching in zone 1, the Yard Zone, and the time consumed and number of loaded cars handled in common carrier transportation service in each zone. From the summary of time consumed and number of loaded cars handled in common carrier transportation service was ascertained the average time consumed per loaded car in each zone, including the empty movement.

The cars moved to and from each connection during the test period were then traced through the various zones traversed, and each car was assigned the total average time for the complete movement which it made through these zones. The aggregate amount of time consumed in all car movements to and from each connection was then divided by the total number of loaded cars interchanged with each to obtain the average time consumed per loaded car. The average time per loaded car, including empty movement, between Sulphur Mine and the Brimstone's connections, was found to be 5.80686 minutes in the case of cars interchanged with the Southern Pacific and 7.25823 minutes per loaded car in the case of cars interchanged with the Kansas City Southern, and 6.24478 minutes per loaded car for all cars interchanged with both connections. (Rec. 981-2).

[fol. 326] In making the summaries of the locomotive operations during the test, the total time of the large locomotive, No. 10, was assigned wholly to common carrier

service, although there was a small portion of the time spent at the scales that was chargeable to plant service. The time of the small locomotive, No. 9, was divided between common carrier service and intraplant switching on the basis of the detail record kept of its switching operations. Miscellaneous time, spent in going from and returning to the engine-house, as well as time spent in taking fuel and water, were apportioned between carrier service and intraplant switching on the basis of the total time spent each day in each of these switching services.

In allocating the time of the small locomotive between common carrier service and intraplant switching, consideration was given to all conditions affecting the classification of the various switching movements.

During the test period, out of a total of 527 loaded cars handled, 329 were gondolas, loaded with sulphur, or an average of 55 gondolas per day. Frequent spotting of the cars is required in connection with the loading of sulphur and it is necessary to keep a locomotive available for that purpose.

The capacity of the storage bin loading track is not known, but as the maximum number of empties set in on this track at one time during the test period was 25 cars, it probably falls slightly short of holding a half-day's supply of empty. If this is correct, it would be necessary to pull the loads and supply this track with empties not less than three times per day for the average day's loading of 55 gondolas during the test period. As a matter of fact, however, during the test loads were pulled and empties [fol. 327] placed 4 or 5 times per day on several days (Rec. 982-984).

The Southern Pacific engine makes delivery of the empty cars on the interchange tracks at Brimstone Junction during the night and takes away the loads. A supply of empty gondolas is thus available when work begins in the morning. The large Brimstone locomotive, No. 10, moves these cars to the yard, two or more trips ordinarily being made for this purpose. When there is room for additional cars on the sulphur bin loading track, this track is supplied with empties to its capacity, and the remaining empties are set on the storage yard tracks. No more expense is involved in the Brimstone taking the empties from the

Southern Pacific interchange track, placing them on the sulphur bin loading track and removing the loads from that track than there is in setting the empties on the storage yard tracks and removing the loads from that place, but on account of failure on the part of the Union Sulphur Company to provide a track or tracks of sufficient capacity at the Sulphur loading bin to hold a day's supply of cars, or even half a day's supply, the Brimstone is considered to have reasonably met its common carrier requirements when, after supplying the loading tracks with empties to its capacity, it does the next best thing in making a delivery by placing the empties on the storage yard tracks close by where they are available to the sulphur company as needed.

As a matter of fact, the placing of the empty gondolas on the storage yard tracks is entirely for the convenience of the sulphur company. The small Brimstone yard locomotive, which was formerly a sulphur company plant locomotive, spots the cars for the 3 sulphur loading cranes, but this locomotive is not capable of handling any large [fol. 328] number of cars when a considerable part of them have been loaded, and in consequence, as the cars are loaded they are usually taken away in small cuts and carried to the storage yard tracks and more empties brought back. Furthermore, as the loading proceeds towards the north east end of the bin the available capacity of the loading track for holding empties is constantly being decreased, so that frequent removal of the loads and the replacement with empties becomes absolutely necessary.

In its decision of March 10, 1924, the Commission said: "The service of the proprietary company—Union Sulphur Company—in moving cars from the storage tracks to the sulphur bins and returning such cars, loaded, to the storage tracks, is no part of the common carrier operations of the Brimstone." The fact that this service was performed by the Brimstone's Yard locomotive for the Union Sulphur Company, instead of by that company with its own locomotive, as was the case prior to January 1, 1923, did not make common carrier service of this operation, and the time of the Brimstone yard locomotive while engaged in these switching movements, as well as in spotting empty cars for the loaders during the test, was therefore classified as intraplant switching.

Comparatively few box cars are loaded with sulphur, the number depending upon the demand. When the empty box cars are received from connections they are first taken to the scales by the large locomotive and weighed light, and then set in at the box car loading track. When the cars are loaded they are taken by the large locomotive to the scales and weighed loaded. While standing on the scales, adjustment is made by throwing out or throwing in the required amount (Rec. 985-987).

[fol. 329] The delivery of the empty cars to the box car loading plant and the removal of the loads therefrom is performed by the large locomotive, but on one occasion during the test period 10 empty cars were set in on the storage yard tracks by this locomotive, from which place they were later taken by the small yard locomotive and delivered at the box car loading plant. As the capacity of the long track, T-U, at the box car loading plant is ample to take care of several days' supply of empties, there was no occasion for placing these empty cars on the storage yard tracks except one of convenience to the Union Sulphur Company, and the time of the small yard locomotive in handling these cars from the storage yard to the box car loader was therefore charged to intraplant switching. (Rec. 988.)

The plant at Sulphur Mine does not work on Sunday and no sulphur is loaded on that day. Notwithstanding this fact, the small yard locomotive, No. 9, was on duty on Sunday during the test period. An examination of the record of the work performed by this locomotive on that day, May 25, shows that there was no necessity from the standpoint of carrier requirements for this locomotive to have been on duty. In fact, it was difficult for the crew to find work of any kind to do. Several of the movements and a substantial part of the time were included in carrier service in the cost study, in a desire to be fair if not liberal, but they were not regarded as representative of economical and efficient railroad operation. In this connection, attention is called to the fact that in the former test, May 26, to June 1, 1922, the Brimstone had no yard locomotive in service, but it was claimed that the plant locomotive performed certain common carrier services for the Brimstone. In examining the records of that test, it was noted that

[fol. 330] only 44 minutes of the time of the plant locomotive on Sunday, May 28, 1922, was claimed to be chargeable to carrier service. This compares with 123 minutes of the time of the Brimstone's small yard locomotive on Sunday, May 25, in this test, which has been included in this cost study as common carrier service. The time of the small yard locomotive on Sunday, May 25, included in common carrier service in this cost study, is nearly double that on any other day during the 7-day test, notwithstanding the fact that the plant was idle and no sulphur was being loaded. (Rec. 988-990.)

Exhibit A 3 was received in evidence. This shows operating revenues and expenses on the Brimstone for the calendar years 1921, 1922, and 1923, as shown by the carrier's books of account. They were taken from the books of the Brimstone. At the time this cost study was made, the 1924 figures were not available. (Rec. 990.)

The next exhibit is in 2 parts; part 1 showing the operating expenses, taxes, joint facility and equipment rents for calendar year 1923, as they appear on the Brimstone's books, and the adjustment of these expenses made to reflect the reasonable and necessary cost of operation in that year, including the cost of intraplant switching; investment in road and equipment, together with materials and supplies and cash as of December 31, 1923, as they appear on the carrier's books, and certain minor additions thereto made necessary by the adjustment of operating expenses above; interest computed as 5¾% on investment, including therewith materials and supplies and cash; accrued depreciation on road and equipment; summary of total reasonable and necessary cost of operating in 1923, including intraplant switching for Union Sulphur Company, based on expenses as above adjusted and including interest on [fol. 331] investment. Part 2 consists of a separation of the total reasonable and necessary cost of operation in 1923, between common carrier service and intraplant switching, embracing formula for segregating the cost of intraplant switching, factors used in making such segregation and summary of results. In addition to that, there is also an appendix which contains the agreement between the Brimstone and the Union Sulphur Company covering

the lease to the former of certain yard tracks at Sulphur Mine, La., owned by the latter. It also contains a request made upon the Brimstone for certain information to supplement the record and the carrier's answer thereto. (Rec. 990-992.)

Exhibit A-4, Witness Elmore, was received in evidence.

Sheet 2 of this Exhibit shows an adjustment by me of $6,280.85 on account 1208, "Maintaining Joint Tracks, Yards and Other Facilities." The exhibit seems to me to set out why the adjustment was made in considerable detail. In arriving at the figure I consider a fair maintenance cost, I set out a table showing the average cost of maintaining roadway and track per mile on the Brimstone Division of the carrier and on the Lockport Division and the joint yard tracks, referred to by me as the blue tracks. From my observation of this property, based on assistance rendered during the first test period in 1922 and the second test period in 1924, in my opinion, the construction of the tracks, their maintenance and the use of the tracks on the Brimstone Division are fairly comparable with those tracks included in the joint yard, shown in blue. I think the traffic and other circumstances in connection with the tracks on the Brimstone Division make them fairly comparable with the joint tracks from the point of view of maintenance. [fol. 332] The same is not true on the Lockport Division. That is maintained in a much less efficient condition than the Brimstone Division. The traffic is less, the rail is lighter, the ties are in poorer condition. There is no ballast of any consequence on it. (Rec. 994-995.)

On the next sheet, I show corresponding average costs per mile of all tracks for maintenance in 1923, on the trunk lines with which the Brimstone connects, as well as other trunk lines, traversing the same general section of the country. The costs on the trunk line roads must embrace maintenance of main tracks as well as yard tracks. Any maintenance man knows that the maintenance on main tracks is kept up to a higher standard than on yard tracks. It costs more to maintain them. Main track maintenance has to be such that high speed can be maintained by passenger trains and freight trains, whereas the average speed usually determined upon for yard tracks is something like

6 miles an hour. By the tests which I have applied, and which I regard as fair, I think the maintenance costs of the joint tracks are absolutely excessive. (Rec. 995-996.)

On account 1226, Car Repairs, I show an adjustment of $3,450. I think the reasons for doing this are sufficiently explained in my exhibit. Other witnesses who follow me may be able to testify to any further details desired. (Rec. 997-998.)

Coming now to traffic and general expenses. From the total of traffic expenses as reported for year ending December 31, 1923, as shown by the books of the Brimstone, of $16,704.56 I show an adjustment of $13,277.86, leaving traffic expenses, as adjusted, for the year mentioned, at $3,426.70. On general expenses I show an adjustment of $3,999.67, reducing the general expenses as reported by the Brimstone from $24,559.86 to $20,560.19.

[fol. 333] The traffic and general expenses of the Brimstone are very high for a small road less than 8 miles in length, operating no passenger service, deriving nearly 99% of its freight business from one industry, and using only one road locomotive in handling that business between this industry and the connecting trunk lines. The Brimstone maintains general offices in New York City and Sulphur Mine, La., and certain of the officers and clerks at both places are joint employees of the Brimstone and Union Sulphur Company, as shown in the Exhibit. The proportion of the time of joint employees devoted to Brimstone business is not known, but an estimate of this time was furnished by Mr. W. M. Barrow, of counsel for the Brimstone. In connection with Mr. Barrow's statement, which shows sole as well as joint employees, it should be said that not all of these employees were included in traffic and general expenses, but some were included in other groups of operating expenses.

The maintenance of general offices both in New York and Sulphur Mine necessitates the keeping of two sets of records in respect of most of the accounts, and results in other duplication of work. Several of the general officers and employees at both places who are in the joint employ of both the Brimstone and the Union Sulphur Company devote a very small proportion of their time to the Brimstone service, but are paid at a liberal rate of compensation

for a small road. The traffic manager, for instance, is estimated to have spent 5 days per month, or 60 days during the year, on Brimstone business, which is equivalent to about 20% of his time, for which he received $2,500. This is at the rate of about $12,500 a year.

Other joint employees were also paid at a liberal rate for [fol. 334] the very small amount of time given to the Brimstone business. This arrangement may have been a matter of convenience for both companies in view of the ownership of the Brimstone by the Union Sulphur Company, but the maintenance of two general offices at widely separated points and the use of part time employees at both places was not considered representative of economical and efficient railroad operation.

In the respondents' cost study made in 1922 and based on the 1921 expenses adjusted to include certain alleged omissions, the traffic expenses were placed at $15,426.71 and the general expenses at $23,182.25. In 1923, the traffic expenses shown on the Brimstone's books amounted to $16,704.56, and general expenses amounted to $24,559.86, which was an increase over the figures in respondents' 1922 cost study of $1277.80 for traffic expenses and $1377.61 for general expenses. In its decision of March 10, 1924, the Commission disapproved the 1922 figures for traffic and general expenses. (Rec. 298-100)

Traffic and general expenses which were even greater than those which the Commission disapproved in 1922 could not be accepted to determine the reasonable and necessary cost of common carrier service in 1923. It was therefore necessary to make an estimate.

So far as known, there are no small roads entirely like the Brimstone in all respects, and the only means for estimating the reasonable and necessary traffic and general expenses in 1923 was upon the basis of the relationship of these overhead expenses to all other operating expenses on other small roads of substantially similar character. Complete statistics in respect to mall roads are not published, [fol. 335] but in the Commission's "Statistics of Railways in the United States, 1922," the last volume published, there is a list of Class II road, about 300 in number, containing abstracts of certain data taken from their annual reports to the Commission. This list was examined to select

those roads which from the data shown appeared to be most nearly comparable with the Brimstone. (Rec. 1001-1002)

In making this selection, it was the purpose to give consideration principally to industrial lines like the Brimstone, (1) preferably owned or controlled by industries or parties owning industries thereon, (2) preferably handling products of mines as the principal commodity, (3) owning equipment, and (4) reasonably comparable with the Brimstone in one or more of the following respects: length of road operated, tons or ton miles of traffic handled or operating expenses incurred; and to exclude those roads (1) having officials serving without compensation or at a nominal compensation, (2) controlled by other carriers and having joint officers therewith, (3) roads whose traffic and general expenses were likely to be subnormal by reason of unprofitable operation, (4) roads whose general expenses exceeded their transportation expenses, (5) narrow gauge lines, and (6) lines over 50 miles in length.

The list of 300 or more class 2 roads contained abstracts giving only a part of this information, and related to 1922 instead of 1923. Therefore it was used only for the purpose of selecting representative small roads, generally industrial lines, which on account of their length, ton-miles of freight traffic, operating expenses, ownership of equipment and other characteristics seemed to be reasonably comparable with the Brimstone. Roads controlled by other car- [fol. 336] riers, about 70 in number, were not considered in making the selection of representative small roads because of the likelihood of such roads having joint officers with the controlling carrier and their traffic and general expenses being affected thereby. Roads not earning their operating expenses, road having operating expense less than $100,000 or more than $425,000, those amounts being approximately one-half and double, respectively, the amount of the Brimstone's operating expenses in 1923, and roads over 50 miles in length, were also excluded from consideration. From the roads remaining, 25 small roads situated in various parts of the country were selected as probably being more like the Brimstone than the rest. The 25 roads were selected primarily because they were known or thought to be controlled principally by or in the interest of industries, and because they were known or

thought to handle coal, ore or other mine products, or forest products, as the principal commodity. Preference generally was given to the shorter lines 30 miles or less in length, but one line 33 miles and another 47 miles in length, both owned by industries, were included.

The next step was to draw off the necessary data from the 1923 annual reports of these roads to the Commission. This information was set up for each road on a large sheet for comparison with similar information taken from the Brimstone's annual report. (Rec. 1001-1004.)

The statement mentioned was received in evidence as Exhibit A-5, Witness Elmore.

As it was found after compiling this information that 9 out of the 25 roads had one or more general officers serv- [fol. 337] ing without compensation, these were eliminated, but 5 of these roads having two officials serving without compensation, the same as the Brimstone, were set up in a separate list. Of the remaining 16 roads, 3 were eliminated because their operating expenses exceeded their revenues and 2 were eliminated because their general expenses were greater than their transportation expenses. This left a group of 11 roads having no officers serving without compensation, and a second group of 5 roads having 2 officers serving without compensation, the same as the Brimstone. These two groups of roads, together with various data taken from their 1923 annual reports, are shown on page 26 of Exhibit A-4. All of the 11 roads shown in the first group handle products of the mines as the principal commodity carried, and most of them are controlled by industries. In the second group, two roads handle products of the mines as the principal commodity, and three handle forest products as the principal commodity.

In selecting the 11 roads mentioned, none was omitted for the reason that this traffic and general expenses were apparently high. The plain averages of the ratios of traffic expenses and general expenses to all other operating expenses for the group of 11 roads having no officers serving without compensation were 1.706% in the case of traffic expenses and 11.326% in the case of general expenses. The weighted average ratios for this group were 1.41% for traffic expenses and 11.50% for general expenses. The plain average ratios of traffic expenses and general expenses to all

other operating expenses, for the second group of 5 roads having 2 general officers serving without compensation, the same as the Brimstone, were 1.74% in the case of traffic expenses and 9.97% in the case of general expenses. [fol. 338] The weighted average ratios for this group were 1.52% for traffic expenses and 9.98% for general expenses.

The Brimstone's ratios of traffic expenses and general expenses to all other operating expenses were 9.75% in the case of traffic expenses and 14.33% in the case of general expenses.

On the basis of the average ratios of Traffic Expenses and General Expenses to all other operating expenses for the group of 11 roads having no officers serving without compensation, it was estimated that the reasonable and necessary traffic expenses and general expenses of the Brimstone in 1923 requisite for the economical and efficient operation of its road should not have exceeded 2% and 12%, respectively, of all other operating expenses.

The application of these percentages to the total of all other operating expenses of the Brimstone than traffic and general expenses, before making any of the adjustments in the operating expenses which are set out in this exhibit, resulted in estimated traffic expenses of $3,426.70 and in estimated general expenses of $20,560.19. Account 1251, Traffic Expenses, was adjusted accordingly by the deduction of $13,277.86, and Accounts 1291 to 1294, inclusive, General Expenses, were adjusted by the deduction of $3,999.67. (Rec. 1004-1006.)

Basing my answer on my knowledge in general of other small roads, a traffic department as large as the Brimstone maintains in New York is not ordinarily required nor would it seem to me to be necessary in this case.

Part 2 of Exhibit A-4 contains the formula for segregating the cost of intraplant switching, showing the detail processes used. There is a recapitulation shown of the reasonable and necessary cost of operation, and the separa- [fol. 339] tion of this cost between common carrier service and intraplant switching.

The agreement between the Union Sulphur Company and the Brimstone whereby the latter leases 2.76 miles of the yard tracks of the former at Sulphur Mine, in blue on

the map, reserves to the Union Company the right to jointly use these tracks with the Brimstone, and obligates the latter to bear the entire cost of their maintenance and to pay an annual rental of $3,185.98 for their use. The agreement also grants to the Brimstone the right to use without additional compensation the tracks shown in green on the map, aggregating about 1.12 miles, for the purpose of reaching certain facilities of the Union Sulphur Company, which it also uses jointly with that company. The rental of $3,185.98, however, does not cover the use of these facilities, as a separate charge is made for such use. In view of the terms of this agreement, it is necessary to explain why a portion of the maintenance and rental of the blue tracks was included in the cost of intraplant switching in the cost study.

The Brimstone does not own any shops, enginehouse, water station, fuel station, freight house or office building at Sulphur Mine, but uses those of the Union Sulphur Company at that place. It also uses certain yard tracks of that company in reaching these facilities, and in addition uses some of the same tracks as well as certain other yard tracks of that company in serving its sulphur plant at that place. No charge was made against the Brimstone prior to 1922 for the use of any of the tracks or other facilities of the Union Company, but in cost study made by respondents in that year, based on the Brimstone's expenses for the year 1921, and certain data derived from the test of May 26-[fol. 340] June 1, 1922, inclusive, the respondents made certain adjustments of these expenses to cover alleged use of tracks and other facilities, and to cover various other things, which it was claimed should be included in the cost of common carrier operation. The yard tracks which it was claimed were used by the Brimstone in common carrier operation aggregated 3.88 miles, consisting of 2.76 miles of tracks colored in blue and 1.12 miles of tracks colored in green on the map. These are the same tracks referred to in the agreement of January 1, 1923, between the Union Company and the Brimstone, whereby the latter leased the tracks colored in blue, assuming the entire cost of maintenance and agreeing to pay an annual rental of $3,185.98 for their use, including the use without additional compensation of the tracks colored in green. (Rec. 1006-1009.)

In the respondents' cost study in 1922, the track maintenance was based on the cost of maintaining 8.01 miles of the Sulphur Company's yard tracks. Due to the alleged greater use of the 2.76 miles of yard tracks, in blue, maintenance was allocated to these tracks in the ratio of 1.5 to 1 per mile, the balance of the maintenance expenses being apportioned over the remaining 5.25 miles uniformly on a mileage basis.

Originally in the cost study the rental for the use of the 2.76 miles of blue tracks and 1.12 miles of green tracks was based on interest at 6% on the estimated cost of reproduction new of the respective tracks, plus taxes. Later this was revised to cover taxes plus interest at 6% on the estimated cost of reproduction less depreciation of the tracks. The respondents estimated the Brimstone's pro- [fol. 341] portion of the use of the blue tracks at 90%, and of the green tracks at 35%. The respondents' cost study, as revised, placed the Brimstone's proportion of the interest rental plus taxes at $2,209.50 for the 2.76 miles of blue tracks and $384.21 for the 1.12 miles of green tracks, or a total of $2,593.71 for the 3.88 miles of blue and green tracks. This cost study placed the Brimstone's proportion of the maintenance of the blue tracks at $7,371.35 and of the green tracks at $775.51, or a total of $8,146.85 for the maintenance of both the blue and green tracks. (Rec. 1009-1010.)

No test was made or record kept by respondents to actually determine the Brimstone's proportion of the use of the blue and green tracks, but this was based on an estimate made by certain of the joint officials of both companies. However, the estimate of a 90% use of the blue tracks by the Brimstone in carrier service was not borne out by the test of May 26-June 1, 1922, on account of the erroneous classification by the respondents in their cost study of various intraplant switching operations as carrier operations, and was not approved by the Commission. The Commission found that an equal division of the maintenance, taxes and interest rental between the two companies would be more than should be assigned to the Brimstone.

The Commission also disapproved the allocation of maintenance to the blue tracks in the ration of 1.5 to 1 per mile,

as this was supported solely by the opinion of certain of the respondent's witnesses to the general effect that their [fol. 342] greater use as compared with other tracks of the Union Company warranted such a differentiation.

However, using the respondents' own figures for the total maintenance cost, interest rental and taxes for the 2.76 miles of blue tracks, and assuming the Brimstone's proportion of use of these tracks at 50%, which the Commission thought was more than they were entitled to, the Brimstone's proportion of the maintenance would be $4,095.20, and of the interest rental and taxes would be $1,227.50. The Commission did not disapprove of the respondents' figures for the Brimstone's proportion of maintenance, interest rental and taxes for the 1.12 miles of green tracks based on a 35% use of these tracks, which amounted to $775.51 for maintenance and $384.21 for interest rental and taxes. On the basis of these figures, the total maintenance for the 3.88 miles of blue and green tracks would be $4,870.71 and the interest rental and taxes $1,611.71.

In the agreement of January 1, 1923, covering the lease of the blue tracks and the right to use the green tracks, the Brimstone did not use its own estimate of maintenance and rental, amounting to $7,371.35 for the maintenance of the blue tracks and $775.51 for the green tracks, or a total of $8,146.86 for the maintenance of both blue and green tracks, and did not use its own estimate of the interest rental and taxes, amounting to $2,209.50 for the blue tracks and $384.21 for the green tracks, or a total rental of $2,593.71 for both the blue and green tracks, but instead agreed to pay an annual rental of $3,185.98 for the use of the blue tracks, including the use of the green tracks, and to assume the entire cost of maintenance of the blue tracks. The [fol. 343] cost of maintaining the blue tracks in 1923, as shown by the Brimstone's books, was $13,772.15. (Rec. 1010-1012.)

In executing the lease of January 1, 1923, the Brimstone, therefore, not only greatly exceeded its own estimate of the maintenance and rental charges which it considered to be part of the cost of common carrier service, but it very greatly exceeded the figures which the Commission thought were more than it was entitled to include. The Brimstone,

of course, in executing the lease of January 1, 1923, did not have before it the Commission's decision of March 10, 1924. However, in a cost study to determine the reasonable and necessary cost of performing common carrier service in 1923, this does not constitute any reason for including therein any portion of the maintenance and rental charges of these tracks attributable to switching operations. It was therefore necessary to exclude from the maintenance and rental charges in 1923 the proportion attributable to intraplant switching. This was done on the basis of the ratio of the tractive power-hours of the small yard locomotive, No. 9, while engaged in intraplant switching in the Yard zone to total tractive power hours of both the small yard locomotive, No. 9, and the large road locomotive, No. 10, while engaged in all services in the Yard zone during the test period.

In conjunction with the leasing of the yard tracks on January 1, 1923, the Brimstone took over the performance of intraplant switching for the Union Company in connection with loading of sulphur, which, prior to that time, that company had performed for itself by its own lomotives. Up to this time the Brimstone kept only one locomotive regularly in service, but in taking over this intraplant [fol. 344] switching it became necessary to put a second locomotive in service, as the loading of sulphur involves a number of switching operations requiring the presence of a locomotive steadily throughout the day. As no charge was made against the Union Company for the intraplant switching performed for it during 1923, it was necessary to deduct the cost of that service in order to arrive at the reasonable and necessary cost of the Brimstone's common carrier operations. As conditions had undergone no change in 1924, it was apparent that a test to determine the proportion of total engine time spent in intraplant switching would afford a reasonable and practical basis for arriving at the proportion of the total cost of operaion in 1923 chargeable to intraplant switching. With this purpose in view in making the test, May 21-27, 1924, the use of tracks, equipment, and methods of operation were carefully observed. (Rec. 1012-1014.)

The Brimstone not only uses its small yard zone locomotive in intraplant switching for the Union Company, for

which no charge is made, but also furnishes free use of hopper-bottom gondolas to that company for handling sulphur from the sulphur storage bin to the conveyor pit for loading into box cars. While comparatively few cars are involved in this plant usage of equipment, a charge to plant service with a corresponding credit to common carrier service should clearly be made on this account, particularly in view of the very high cost of repairs, depreciation and retirements of the Brimstone's car equipment.

Included in the 2.76 miles of yard tracks leased by the Brimstone from the Union Company are 2 tracks used by [fol. 345] the latter for strictly plant facility purposes. One of these tracks, 950 feet long, is the fuel oil unloading track, and is marked G to G 1 on the map. For a part of this distance there is a trough in the middle of this track, over which the tank cars stand while the oil is being drained and passed to storage. The other is the box car loading track, marked T-U on the map, 2,898 feet long, which was in controversy at the prior hearing of this case because of the question as to its use by the Brimstone for common carrier purposes. These tracks are just as much plant facility tracks as the loading track alongside the sulphur storage bin, and as they are owned by the Union there was no need for the Brimstone to lease these tracks and then turn them over to that company for plant use. Part of the rental and maintenance of the 2.76 miles of yard tracks leased from the Union is chargeable to plant service an account of the plant usage of the two tracks just mentioned.

Reference has been made that in weighing box cars loaded with sulphur, adjustment may be necessary at the scales by throwing in or throwing out sulphur. This adjustment involves only a part of the box cars loaded with sulphur, but the time consumed in making this adjustment is as great and sometimes greater than that consumed in weighing the car. The cars were weighed by the large locomotive, No. 10, during the test, all of time being assigned to carrier service in the cost study. Some of the time of this locomotive in the weighing zone should have been charged to plant service on account of the time it was detained

while adjustment was being made, but there was no satisfactory basis for arriving at this. (Rec. 1014-1016.)

[fol. 346] While it is clear charges should have been made against plant service because of the use of gondola cars in handling sulphur from storage bin to conveyer pit for loading into box cars, and for the maintenance and rental of the 2 tracks used by the Union in plant service, and for the time of the large locomotive at the scales while the cars were being adjusted, there was no satisfactory means for definitely determining this. They would undoubtedly amount to a substantial sum in the aggregate, but no attempt was made in the cost study to include them in cost of intraplant switching and exclude them from cost of carrier service.

I mention these things to show that in making the cost study it was the intention to be entirely fair if not liberal.

No attempt was made to estimate the amount of car material on hand December 31, 1923, previously charged to car repairs, as purchased, and not consumed in such repairs prior to that date, but the Brimstone was requested to furnish this information. The figures it furnished merely cover its estimate of new car material remaining on hand, and are believed to be entirely insufficient to cover all materials for car and other repairs including new, second hand and scrap materials, all of which constitutes a credit to operating expenses.

From a comparison of the results of the test of May 21-27, 1924, with the former test of May 26-June 1, 1922, it was noted that considerably more time in proportion to the number of cars handled was consumed in the 1924 test in the Southern Pacific connection zone than in the 1922 test. The average time consumed per car in this zone in the 1922 test was .8434 minutes, and in the 1924 test was [fol. 347] 1.28453 minutes. An examination of the detail record of the 1924 test shows that the locomotive made a number of trips to and from this connection each day, and on a large proportion of these trips either handled a very small number of cars or no cars at all. This locomotive handled 377 loaded and empty cars into this zone and 345 loaded and empty cars out of the zone, making 41 trips into the zone and 41 trips out during the test period. The maximum number of cars handled into or out of this zone

being 377, the average handled per day for the 6 days this locomotive worked would be 63, during the test period. As it easily handles 35 loaded cars into the zone, an average of 63 cars per day in and 63 per day out ought not at the most to have required more than two round trips into the zone with loads and 2 round trips out with the empties, or an average of 4 round trips a day, or 24 for the 6 days. The actual number of round trips made by this locomotive during the 6 days was 41, and this cannot be considered to be representative of economical and efficient operation.

In a cost study to determine the reasonable and necessary cost of operation, some deduction should probably have been made on this account, particularly in view of the fact that 52.3% more time per car was consumed in handling the cars in this zone during this test than during the former test in 1922. Actuated by a desire to be fair, no deduction was made in the cost study on account of the unnecessary trips made by this locomotive. (Rec. 1016-1019.)

I have prepared an exhibit showing the number of loaded cars interchanged by the Brimstone with connecting carriers in different periods, together with a summary of cost of common carrier operation in 1923 and average cost per [fol. 348] loaded car interchanged, and also the approximate cost of interchange for Southern Pacific and Kansas City Southern connections. I think it is self-explanatory.

Exhibit A-6, Witness Elmore, was received in evidence.

I have also prepared an exhibit showing the hours of service of enginemen and trainmen during calendar years 1921, 1922, and 1923, also showing the revenue traffic carried during the same time, together with average engine time consumed per loaded car handled during those years.

Exhibit A-7, Witness Elmore, was received in evidence.

If an average load of 5 tons per car is assumed for less than carload traffic, the total number of loaded cars of both carload and less than carload traffic handled in these 3 years would be: 1921—16,662 loaded cars; 1922—20,178 loaded cars; 1923—24,636 loaded cars.

On the basis of the total hours of service of locomotive engineers and total number of loaded cars handled, the

average engine time consumed in handling the traffic was: 1921—8.9737 minutes; 1922—7.4180 minutes; 1923—16.5404 minutes.

On January 1, 1923, the Brimstone took over the performance of intraplant switching for the Union Company in connection with loading of sulphur, which previously had been done by that company with its own locomotives. The average engine time consumed per loaded car in 1923 therefore includes time spent in intraplant switching as well as carrier service. If deduction for engine time spent in intraplant switching in 1923 is made on the basis of ratio of engine time in intraplant switching to total engine time [fol. 349] during the May 2-27, 1924, test period, the average time consumed per loaded car in carrier service for the 3 years was: 1921—8.9737 minutes; 1922—7.4130 minutes; 1923—8.5845 minutes. The Brimstone performed no intraplant switching in 1921 and 1922.

These figures show that the deduction for intraplant switching in 1923 on basis of the intraplant proportion of engine time during the test period results in average engine time per loaded car in carrier service not greatly different in 1923 from the averages in the two preceding years when the Brimstone did not perform any intraplant switching, and bear out the claim that the assignment of engine time to intraplant switching during the test period was fair and reasonable. (Rec. 1019-1022.)

The figures shown in my tables "A" and "B" in this exhibit were taken from the carrier's books. My average load of 5 tons per car for less than carload traffic is based on an examination of many records of the Commission, indicating that less than carload traffic averages generally about 5 tons per car.

I have prepared an exhibit showing the amount and cost of fuel oil consumed by locomotives during the calendar years 1921, 1922, and 1923 locomotives of the Brimstone.

Exhibit A-8, Witness Elmore, was received in evidence.

These figures were taken from the carrier's books.

The total number of loaded cars handled during 3 years, as shown by Exhibit A-7, was: 1921—16,662 loaded cars; 1922—20,178 loaded cars; 1923—24,636 loaded cars. Based upon the total fuel consumption and total number of loaded

cars handled, the average fuel consumption per loaded car handled in these 3 years was: 1921—.266 barrel fuel oil [fol. 350] consumed per loaded car handled; 1922—.243 barrel; 1923—.347 barrel. The average fuel oil consumption per loaded car handled in 1923 increased 30.45% over the average consumption in 1921 and 42.80% over the average consumption in 1922.

However, as on January 1, 1923, the Brimstone took over the performance of intraplant switching for the Union Company which prior thereto that company performed with its own locomotives, the average fuel oil consumption per loaded car handled in 1923 includes the fuel oil consumed in intraplant switching as well as in carrier service. If deduction from the 1923 fuel oil consumption is made for intraplant switching on the basis of the proportion of the fuel oil consumption in intraplant switching during the test period, the total fuel oil consumed in carrier service was only 6,204 barrels instead of 8,551 barrels, and the average consumption per loaded car handled in carrier service was .252 barrel instead of .347 barrel. The average consumption of .252 barrel per loaded car handled in carrier service in 1923 represents a decrease of 5.27% from average of 1921, and an increase of 3.70% over the average in 1922. These figures further bear out the claim that the apportionment between carrier service and intraplant switching during the test period was fairly and reasonably made. (Rec. 1022-1024.)

I have prepared an exhibit showing certain data relating to freight train cars owned by the Brimstone for calendar year 1923.

Exhibit A 9, Witness Elmore, was received in evidence.

This shows the number of freight train cars owned by the Brimstone, the investment in these cars and the constructive or estimated mileage made by them during 1923. [fol. 351] These were based on data furnished by the Brimstone. The exhibit also shows the amount of the interest on the investment in these cars, the estimated taxes, the cost of repairs, depreciation and retirements, and the amount received for the hire of these cars.

Car repairs, depreciation and retirements, interest and taxes, amounted to $91,280.39 in 1923. The amount received

from the hire of these cars was $27,409.67. The excess of repairs, depreciation and retirements, taxes and interest, over the amount received from the hire of the cars, amounted to $63,790.72.

During 1923, the Brimstone handled a grand total of 24,636 loaded cars of carload and less than carload traffic. The difference of $63,790.72 between the amount of the repairs, depreciation, retirements, interest and taxes and the amount received from the hire of the cars, therefore, represents a charge of $2.59 per car which every loaded car handled by the Brimstone must bear to pay for this loss.

The Brimstone's car equipment are all gondola cars, and are used almost wholly in shipments of sulphur to the Union Company's docks at Sabine. During 1923, 11,409 loaded gondolas were shipped to Sabine via Southern Pacific and 277 loaded gondolas shipped to Port Arthur, via the Kansas City Southern, or a total of 11,685 loaded gondolas via both connections. Based upon the excess of the repairs, depreciation, retirements, taxes and interest on these cars over amount received for their hire, amounting to $63,790.72, this amount, prorated between the 11,685 gondolas loaded with sulphur, would represent an average of $5.46 per loaded gondola.

For comparative purposes, I have prepared a statement [fol. 352] of switching test of May 26-June 1, 1922, with test of May 21-27, 1924, showing allocation of locomotive time to carrier service made in the cost studies of the Brimstone, and also showing allocation of locomotive time to carrier transportation service in test of May 21-27, 1924, made by representatives of the Commission.

Exhibit A-10, Witness Elmore, was received in evidence.

It should be explained, in connection with the comparison between the allocation of engine time by the Brimstone in the two tests that it was necessary in the test of May 21-27, 1924, to bring together the engine time and cars in Zones 1, 3, and 4, to make them comparable with the common zone in the former test. In the former test, the road was divided only into 3 zones, the common zone, the Southern Pacific connection and the Kansas City Southern zone. The common zone therefore embraced in the later test zones 1, 3, and 4.

The description Allocation of Locomotive time to Carrier Service made by the Brimstone is based on the exhibits filed by the Brimstone in this case. I have taken the reallocation by the Brimstone. (Rec. 1024-1028.)

Cross-examination:

In my Exhibit A-2, which includes the result and detailed record of the May 21-27, 1924, test, in allocating the service between plant and common carrier, the decision of the Commission of March 10, 1924, was my guide. If the services which I have classified as plant service were actually spotting service in connection with carrier operation, it would have made a difference of course. My intention was gen- [fol. 353] erally to treat the spotting service as intraplant, and as I understand the Commission's decision, they viewed it as intraplant and classified it as such.

In dealing with the oil shipments and the placing of the fuel oil shipments, I am not certain if I included as common carrier service the spotting of the tank cars at the oil rack and the taking of those cars from the oil rack. Of course the placing of the loaded oil cars on the unloading track and the removal of the empties from that track was, as I recall, all treated as carrier service. You are correct in saying I made no attempt to classify the service of either the large or the small engine except in compliance with what I considered to be the interpretation of the Commission of that service in its report of March 10, 1924. (Rec. 1028-1030.)

In my deduction of the amount which was allowed in the Commission's exhibits to the Brimstone as traffic expenses, I disregarded all of the amounts which were actually paid and used an arbitrary estimate in arriving at the amount assigned. As to whether I am willing to say that the amount which was paid to the traffic manager, of $2,500 a year, is excessive for a traffic manager, assuming that there is no duplication of that service: So far as the individual charges are concerned, I make no claim as to whether they are reasonable for the individual or position or not. I do not know. But considering traffic expenses on a whole with relation to the traffic expenses on other roads more or less similar, the expenses are, to my mind, clearly excessive. What I did was to take a lot of railroads and arrive at an

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arbitrary percentage and use that as a basis for reducing the amount, without going into the question of whether or not those are reasonable expenses or reasonable payments [fol. 354] for the officers and employees by this railroad or by another railroad employing men in similar positions.

The same is true as to "General Expenses." I do not think a salary of $1,800 for a president, which is provided for by charter of this company, is in any wise excessive, but the examination and observation I have made of other roads is that one general officer frequently fulfills several positions. He gets more than $1,800. I think that is also true of a treasurer—when he fills other positions he gets more than $900. I do not think the amounts paid for officers, where there is no duplication of work, are unreasonable, except possibly to the extent that some of these men are joint men and the actual time they devote to Brimstone service is, of course, a matter of opinion. I based it on the data that you (Mr. Barrow) furnished me, showing approximately an estimated proportion of the time. I made no attempt to compare salaries paid by the Brimstone for these various officers and other employees with the salaries paid by other railroads for similar officials and employees. (Rec. 1030-2.)

Redirect examination:

The salary of the traffic manager of $2,500 is based on 20% of the joint service of that employee engaged in traffic duties. 100% would amount to about $12,500 a year. (Rec. 1032.)

Mr. W. H. Graves, Examiner of Accounts, Interstate Commerce Commission, Houston, Texas, testified:

I was present at Sulphur Mine, La., during the test of May 21-27, 1924.

On Elmore Exhibit A-4, there is a deduction shown in [fol. 356] the total amount of $3,450 in account 26, Car Repairs, and at the bottom of p. 11 an approximate actual cost of cast iron wheels of $27.40 each is shown. That was the average cost per wheel, as shown by the latest invoice in the carrier's files. It was taken from the carrier's own books and is not an estimate. The $12.51 salvage value of

a wheel was furnished, I understand, to Mr. Boltwood by the storekeeper of the Brimstone. I endeavored to secure the salvage value of the second-hand and scrap material recovered from the wheels that were removed.

In arriving at the figure of 138 steel wheels being required during the year to replace cast iron wheels, I prepared the exception on the basis of the excess cost of the steel wheels over the original or estimated cost of second-hand wheels removed. In that case it was the actual cost of the second-hand wheels removed—average cost. That number, 138, was not furnished by the carrier. The carrier did not have an inventory of its mechanical material on hand January 1, 1924, and the figures that I originally used were somewhat different from that, and were based on an inventory about May 1, and then adjusted back to January 1, 1924, by adding the disbursements during those 4 months. (Rec. 1034-1035.)

HARVEY BOLTWOOD, Assistant Director, Bureau of Service, Interstate Commerce Commission, Washington, D. C., testified:

I was present at Sulphur Mine, La., during the test period in May, 1924. I made an examination of the records there in connection with the application of steel car wheels—Account 1926, Car Repairs. While working with Mr. Carnes in connection with the figures, it was developed that 200 steel car wheels were purchased in 1923, 100 in [fol. 356] May and the second 100 in October, and in order to make definite calculations in connection with the adjustments, it was necessary to determine how many wheels were on hand as of December 31, and the records in the master mechanic's office were not thoroughly complete in connection with work which was applied, parts which were applied, to the different units. On May 29 a check was made of the number of steel wheels on hand as of that date and it was found that there were 56 steel wheels, mounted and unmounted, on hand as of May 29, 1924. The records in the master mechanic's office then showed some of the major operations or major renewals made to cars, and a check of that record showed that from January 1,

1924, to May 17, that 58 wheels had been applied. That made a total—by this calculation it showed that there were 114 cast steel wheels on hand as of December 31, 1923. I know of no other way in the absence of complete detailed records in the master mechanic's office in which the number of car wheels required could be arrived at. My figures are based upon an actual count of the wheels on hand and such records as the master mechanic kept. That was a transcript taken right from his record and tallied right on this sheet. (Rec. 1036-1038.)

G. H. Bacon, Assistant Comptroller, Kansas City Southern Railway Company, Kansas City, Mo., testified:

In connection with representatives of the Brimstone and the Southern Pacific, I have made additional exhibits in this case. They were made at Sulphur Mine, about March 9, 1925. At that time I had the exhibits prepared by the Commission and filed by Mr. Elmore yesterday and our exhibits were made in reference thereto.

Our first exhibit is an allocation as between common [fol. 357] carrier service and intraplant service as made by the Brimstone of the time of engines 9 and 10 of the Brimstone during the May 21-27, 1924, test. For comparison, the allocation of time as shown on the Commission's exhibit is shown. Methods of ascertaining average minutes per car are also shown. (Rec. 1042-3.)

Exhibit A-11, Witness Bacon, was received in evidence.

The next exhibit consists of data showing cost of reproduction new and less depreciation, including in both cases working capital, materials and supplies, and going concern value, as of December 31, 1923, of the Brimstone. The figures so ascertained and reflected by this exhibit are the bases on which return on investment is figured and used in the principal cost exhibit to be submitted.

Exhibit A-12, Witness Bacon, was received in evidence.

My next exhibit shows the operating expenses of the Brimstone for 1923, as reflected by the audited accounts of the company; also the elimination of certain charges as

made to operating expenses during that year which were not applicable to that period, together with reclassification of certain charges incorrectly classified in the accounts as originally stated on the books of the Brimstone. The resultant remainder represents, in our opinion, the reasonable and necessary cost of operation in 1923, including common carrier and intraplant switching, to which has been added taxes, joint facility rents, equipment rents and amount representing an annual charge for amortization of road accounts and return on investment to which the Brimstone is entitled based on valuation figures covered by Exhibit A-12. The basic data in this exhibit corresponds with that of the Commission's exhibit A-5, insofar as op- [fol. 358] erating expenses are concerned. The formula it used in its exhibit has been followed generally here, although some differences in methods exist in connection with certain charges, which will be more fully explained later. (Rec. 1043-5.)

Exhibit A-13, Witness Bacon, was received in evidence.

Our next exhibit shows the number of loaded cars interchanged by the Brimstone with its connections during different periods, together with average cost per car for certain periods based on reasonable and necessary cost of operation of common carrier service, including taxes, rentals, amortization fund and return on investment, and further separated as to the relative cost of common carrier service as between interchanges to the Southern Pacific and the Kansas City Southern. The latter separation is made by the same method used by the Commission in obtaining similar information in its exhibit A-6. (Rec. 1046-47.)

Exhibit A-14, Witness Bacon, was received in evidence.

V. V. Kirkpatrick, Valuation Engineer, Kansas City Southern Railway Company, testified:

I was employed by the Brimstone in this case as valuation engineer. I have already testified at a prior hearing. I have been furnished with copies of exhibits prepared by the Commission's representatives. I have attended con-

ferences at Baton Rouge and Sulphur Mine where these exhibits were discussed.

I have prepared a statement showing the cost of reproduction and cost of reproduction new of the Brimstone as of 1923. The original valuation, or the basic figures from which I start, were prepared some time in 1921 and introduced at the other hearing. There have been additional studies made to arrive at what it would cost to repro- [fol. 359] duce the property as of 1923. The valuation I made is the one contained in Exhibit A-12, Witness Bacon.

Referring to this exhibit: On "Engineering," the basic figure of $3,658 is the same found on the 1914 plan of costs for the property as it existed in 1918. To bring that to 1923, it was increased by the use of an index of 194, arrived at after a study of the increase in engineering cost upon the Kansas City Southern. Their records were resorted to for the reason that the Brimstone does not maintain a full engineering organization.

On "Land," the basic figure shown, $6,022, was the value as found for the land as it existed in 1918. There was no increase in land values near Sulphur Mine; therefore the same figure was brought forward for 1923.

Account 3, "Grading" was increased by the use of an index of 150, arrived at from a general knowledge of increase in grading costs in Southern territory. I depended largely upon what it cost to do highway work. The highway cost did not show quite 50% increase; I think it was 42%. I used 50 because 42 seemed unreasonably low. When comparing grading costs in other parts of the country, they run about 85% over the so-called "normal period." A contractor has to meet a payroll increase of about 98% and an equipment increase of about 120, and other increases in like proportion. In my opinion, 50 is conservative.

For "Bridges, Trestles, and Culverts" the same index is used as in building accounts. That was for the reason that on the Brimstone the bridges, trestles and culverts consist chiefly of timber, and as timbers had quite a large increase, more so than other general building materials, the 201 was [fol. 360] thought to be very conservative. (Rec. 1047-1056.)

As labor on this account, I used building labor.

Account 8 "Ties" was increased 56% and it was developed from Kansas City Southern experience that was thought applicable to the Brimstone because both companies purchase ties in the same general territory. I used data covering untreated ties. The Brimstone has started rather recently to use some treated ties.

Account 9 "Rails" was increased by 50%. That is taken from market quotations—all available to me. For about 5 years, I have subscribed to publications showing quotations of different items going into railway construction, and it is from those sources I got the information on which I worked up the data for Account 9 "Rails," and other items where the cost of material is taken into consideration. We make a yearly report to the Commission on Valuation Order No. 14, which is simply a digest of the purchases of major materials going into construction or maintenance work. (Rec. 1051-1052.)

Account 10 "Other Track Material" is increased by 88%. That is the average of a number of items reported under Valuation Order 14. No labor is involved in that account.

Account 11 "Ballast" was increased in the same amount—188. The Brimstone purchases very little ballast, and the information could not be secured from their records. It was found in a general investigation and from a general knowledge of ballast prices, that the 88% increase was very conservative to use for this account.

Account 12 "Tracklaying and Surfacing" was increased by use of index 203. That was taken from the Brimstone's records of wages paid to their maintenance forces, that is, [fol. 361] their track maintenance forces. That is not exactly the same kind of men that would be employed in the reconstruction of a property, but about the same differential obtains now as has always obtained between the common labor forces on railway work and construction.

Accounts 13 "Right of Way Fences" and 15 "Crossings and Signs" were increased by use of building index for the want of something better. The aggregate of the 2 was very small. Practically the same forces would be employed in the construction of property under these 2 accounts, and a great deal of the materials are the same as would enter into building work.

Account 16 "Stations and Office Buildings" was increased by use of an index of 201. That an Account 17 "Roadway Buildings" are the two building accounts, and the information and data was gotten from Kansas City Southern experience, building materials reported under Valuation Order 14 and labor increases in the bridge and building forces.

Accounts 37 and 38 "Roadway Machines" and "Roadway Small Tools" were increased by use of index of 188, for want of something better, and is thought to be conservative when compared with increases in other equipment and tools.

Account 51 "Steam Locomotives" and Account 52 "Freight Train Cars" were increased by an index of 224 and 203, respectively, from data worked up by the Presidents' Conference Committee. This was resorted to for the reason that equipment purchases on a small line such as the Brimstone are not sufficient to make a trend, and from comparing these increases as shown in the Presidents' Conference Committee with purchases of equipment, it was found to be fairly accurate, and that does not have such a [fol. 362] great effect, when you consider that the major portion of this equipment, particularly cars, was retired before 1923 was reached.

Now the Additions and Betterments from 1918 to 1923 are equated in the same manner as the basic figures are equated, that is, they are equated from the date they come into service down to 1923.

The General Expenditure Items, 71 to 77, are arrived at in the same manner as was used by the Bureau of Valuation, that is, after the sum is found for the other accounts, then you increase that by the same percentages as were used by the Bureau, except that in this exhibit we used, for interest during construction, 8% rather than 6%. I do not recall why we did that.

The last page of Exhibit A 12 shows the material and supplies and working capital on hand as of December 31 for the years 1918 to 1924, inclusive. That is taken from the balance sheet as of that date for these different years and shows an average of $79,874 for material and supplies and an average of $34,784 for cash or working capital, for

7 years. As I recall, the Commission used the sum of $5,976 for cash.

I do not know why this amount is so small for 1923. It is the amount shown on the balance sheet for December 31, 1924. That amount, $5,976, that was on the books at the end of 1923, is not, in my opinion, a fair and proper amount for working capital as compared with the experience of the Brimstone over a 7 years' period.

The result of my study shows the cost of reproduction new plus an estimated amount to cover working capital and material and supplies and addative for going concern value foots up to $663,576. (Rec. 1052-1057.)

[fol. 363] That was an estimate for going concern value. I did not have much to go on, except that there has been an amount added by the Commission in its findings of value on different carriers, in varying amounts that probably spread from about 5% to 11 or 12%. In the case of the Kansas City Southern, it was 11.24, and the use of the 7½% is more of an estimate than anything else.

I do not know what the Commission has allowed in any short line valuation case in this territory for going concern value. I do not know of any carrier of like mileage with the Brimstone that they have found a final value on.

For reproduction cost new less depreciation, plus working capital and material and supplies and going concern value as of December 31, 1923, I found $633,015. I charged off 22% for depreciation, arrived at in the same manner as the Commission arrived at the depreciation as of the valuation date. It follows closely Memorandum 226 of the Commission, showing how depreciation shall be found. It is considerably higher than the depreciation found on their valuation date, due to the fact that the equipment, particularly car equipment, was in a run-down condition. In fact, 96% or 98% of the car equipment was retired and replaced within the next 2 years. And there is nothing particularly sacred about the valuation date. The Commission would have found a great deal higher condition per cent if the valuation date had been fixed at 1920 or any year thereafter. There has been no finding by the Bureau of Valuation since the valuation date as to the amount to be charged off for depreciation. (Rec. 1057-1058.)

Cross examination:

My compensation for making this valuation for the Brim- [fol. 364] stone had no relation to the amount of valuation arrived at.

On Account 3 "Grading," I think the cost of grading in highway work is comparable with cost of grading in railroad construction if you measure highway work against highway work. Measuring it against railroad construction it is not; I do not know which would be higher as I have not done it that way. I think 50% is conservative on grading; at the same time I found that highway work in that section of the country traversed by Kansas City Southern increased only 42%.

My interest during construction is based on 8%. I don't know the rate of interest on secured loans in Louisiana; 8% may be pretty high.

My estimated amount to cover working capital, materials and supplies is based upon 13.6% of the 1923 operating expenses. It was found about 3 or 4 years ago by the Bureau of Valuation that that was a fair percentage to use in arriving at that figure.

My going concern value of 7½% is only an estimate. They (the Bureau of Valuation) show a greater amount than that for some carriers. For the Kansas City Southern, they showed 11.24%.

I made an examination of the properties in 1921 and one more recently, and from the two examinations I would say that in 1923 the roadway was better, through having replaced certain stretches of worn-out rail with new rail, and through the application of ballast, and the equipment was in better shape, not having been in service so long. That accounts for the difference between the 34% shown in a previous exhibit and the 22% here. Sometimes property gets better as it goes along.

[fol. 365] In my former testimony, I said that depreciation is a factor to be considered when you are reducing the net revenue by the amount of your expenses to find your net railway operating income, but in figuring what your return on outlay should be, it does not exist. By reducing the amount shown here 22% for depreciation—that does not mean my views have been changed. It is my opinion it should not be reduced anything for depreciation.

There is no deferred maintenance on the Brimstone. Deferred maintenance may exist on a railroad and trains operate over it—I would not say safely. (Rec. 1059-1064.)

I do not see why a road like the Brimstone, owned by the Sulphur Company and getting 99% of its traffic from the proprietary company—having a monopoly on the traffic—should not have an allowance for going concern value. It would be a good investment if someone wanted to purchase it. The traffic would necessarily have to move over the Brimstone.

The index shown on my exhibit to put it on the 1923 basis is over 1914, or the average number of years prior to that time. I did not consider the Department of Labor's all-commodity index showing 1923 prices as compared with 1914. In comparison with that, I do not consider my 1923 index rather high.

The largest items on the exhibit are Accounts 51 and 53, "Steam Locomotives" and "Freight Cars" showing 1923 index of 224 and 203. I got that from the Presidents' Conference Committee; that is from findings of the Equipment Committee, headed by Mr. Hale, New York. I had nothing from the American or Baldwin Locomotive Works or any [fol. 366] manufacturers of freight cars to aid me in arriving at the 1923 index over 1914. I had some of that information recently upon another carrier and it checked within less than 1% of the data that Mr. Hale had developed, and I think that is very close.

I do not believe the Presidents' Conference Committee report referred to in connection with the 1923 reproduction cost shows comparisons of the cost of saddle tank locomotives. I think Mr. Hale's data is from all of the locomotives sold by the American and Baldwin Locomotive Works, and probably one or two others. It is developed on a pound basis. I think my index of 224 shown on Account 51 "Steam Locomotives" is from the consideration of the pound price of all locomotives. I do not think the specialties make a particle of difference, because they are so small a part of the completed locomotive, and usually they are based on steel, the same as the locomotive, so the increase would be somewhat the same for the specialties.

I do not consider the fixing of a value for a railroad as an exact science. Two men possessing the same qualifica-

tions for the task, might reach different results. If he was more than 10% off from mine, I would think he was wrong. (Rec. 1064-8.)

In arriving at my figure of value, I considered the original cost of constructing the Brimstone. I did not consider the amount expended in permanent improvements. I considered the cost of constructing about 80% of the line, on which I had a very good cost record. I considered the present cost of reproduction as at the time of my valuation. I did not consider the sum required under efficient and economical operation to meet operating expenses. I did not [fol. 367] compare the present cost of reproduction with the original cost of construction.

My Exhibit 16, introduced at a prior hearing, showed the sum of $7,102 for "Interest during Construction," and this exhibit shows $8,836 covering the same period. That is on account of using 8% instead of 6%.

When I spoke of the going concern value as being a value so far as the market or for sale value might be concerned, I did not intimate that anything like the figure shown in my Exhibit A-12 might represent the value of the Brimstone, either in 1923 or at any other time. I made a general answer to it. I thought that it did have a going concern value, at the rates that will allow it to make money. (Rec. 1068-69.)

R. M. Glover, Division Superintendent, Southern Pacific Lines, testified:

I have charge of the Louisiana Division of the Southern Pacific Lines with the exception of the New Orleans terminals. That includes the Louisiana Western. I did not testify before. I have been with the Southern Pacific lines 21 years. Practically my entire experience has been in the transportation department.

I was called into conference once or twice in 1924 and once in 1925 in connection with the study made by the Brimstone and the other respondents here concerning the operations at Sulphur Mine, La., by the Brimstone. I have been over the Brimstone properties many times and am familiar with the operations. I think I was there in March, 1925,

with Mr. Maxwell, Mr. Kirkpatrick, Mr. Bacon and Mr. Druschke. (Rec. 1070-72.)

[fol. 368] At that time I had before me the exhibits prepared by the Commission's representatives showing the allocation of the time of the engines of the Brimstone between plant facility service and common carrier service. I went over them in detail and made a reallocation of the time as between those two services. About the only point of difference between my reallocation and the original allocation is with reference to the spotting and pulling of cars on the loading tracks, or what is commonly called the bin tracks. The Brimstone places the cars on the tracks laid in front of the face of the sulphur piles so that they may be loaded with a Brown hoist machine, and after being loaded, they are pulled out of these tracks. That service I allocated as carrier, whereas in the original study it was classed as plant service. That is the track in zone 1, Exhibit A-1, leading to the right from the main line of the Brimstone, and running completely across the sulphur storage bin territory colored green on the map. The Brimstone in that territory places the cars for loading and pulls out the cars after loading. Aside from these changes I did not intend to change the allocation made by the Commission's representatives from plant facility service to common carrier service.

It is the common practice for the lines with which I am connected to place a car at a designated point or track for loading, and after being loaded, to pull it off that track. That prevails all over the entire system of the Louisiana lines with one or two exceptions. One or two industries have their own engine and prefer to do this work themselves, but it is simply done through preference. (Rec. 1072-1074.)

[fol. 369] We hold ourselves out to and are ready to perform that service if called upon by these shippers. I would not say the placing of a car on one of these tracks designated as blue tracks, when they are brought in from the Southern Pacific or Kansas City Southern connections in a string or bunch, constituted a placing of those cars at the loading point of that plant.

On page 2 of Exhibit A-11, my idea in changing the classification on that page was simply to charge to carrier

service instead of to plant service the placing of cars for loading on the track upon which they were to be loaded, and the pulling of those cars off of the track after they had been loaded. If the Southern Pacific had owned the lines which are operated by the Brimstone, we would have placed the cars on the loading track at designated points, and after being loaded, would have pulled them off.

The exhibit shows all the way through the allocations as made by the Commission's representatives and the Brimstone in parallel columns. What I have said in reference to the service which has caused me to make this reallocation applies to all of the pages in which changes are shown.

I have not examined the Commission's exhibits in reference to the cost of maintaining the tracks of the Brimstone in the various zones. I made a study several years ago of the cost of maintaining the Louisiana Western tracks of the Southern Pacific over which sulphur moves west of Sulphur, La., as compared with the cost of maintenance on other sections of that line, but I did not expect to testify on that feature, and have not my papers with me. I do know in a general way from experience that the hauling [fol. 370] of sulphur over a line of railroad results in considerable fine sulphur dust being lost from the cars onto the track, and when that becomes wet, it creates an acid which has a very active effect on the track—including all parts of the track. It deteriorates the rail, spikes, angle bars, tie plates, it softens the ties and ruins the ballast, and the result is that the maintenance on a piece of track over which sulphur is hauled and upon which considerable fine sulphur dust is spread is very much heavier than it is on other parts of the line where the same conditions do not exist. The heaviest sulphur movement over the Southern Pacific lines is from the Sulphur Mine to Beaumont and from Beaumont to Sabine Pass. I would not say that the figures showing the average cost per mile of maintenance on the Louisiana Western fairly represents the cost of maintenance on that portion of the line over which the sulphur moves; it would be very much higher. That is, the sulphur track would be very much higher than the general average of the other parts of the line. I cannot say how much higher; it is very much higher. We have frequently called the attention of the Brimstone to the effect on our rails and track

west of Sulphur of the sulphur falling from their cars, and made complaint about it. In fact, two or three years back we were making constant complaints, because the cars were not in good repair and there was more sulphur being lost on the track and the damage to the track was very great and we had cause to complain a great deal. Since that time, the sulphur cars have been put in very much better condition and there is not so much sulphur lost, although there is still quite a good deal, around the Brimstone yard and for a few miles west of there where the sulphur comes out of the cars when they first get to rolling [fol. 371] in the trains, it is very bad, and in the yards at Lake Charles and Beaumont and Echo it is very bad. As to the difference in the tracks in the yards of the Brimstone in and around the sulphur bins with those on the Southern Pacific main line: They are considerably different from the main line east of Sulphur, and the difference between our main line between Brimstone and Sabine Pass is that there is more sulphur wasted on the tracks of the Brimstone than there is on our line, because the sulphur falls more readily from the cars after they are first loaded and while they are being switched than it does later on, after the sulphur settles down in the cars and gets to moving along without any particular jar. The conditions on the Brimstone must be even more burdensome insofar as that effect of the sulphur is concerned than on the Louisiana Western west of Sulphur. (Rec. 1074-1078.)

Cross-examination:

When I made my allocation between common carrier and intraplant switching, I had not seen the Commission's decision reported in 88 I. C. C., 62, in this case.

I could not say positively that after I got through allocating certain intraplant switching to common carrier service some one else considered it and made other changes. I do not think so.

We have six passenger trains each way a day and from three to six freight trains each way a day moving east and west of Brimstone Junction on the Southern Pacific. I could not tell you the life of the tracks, angle bars, frogs and switches, etc., east and west of Brimstone Junction. The cars are not delivered at our interchange track with

the Brimstone going to Sulphur Mine for the loading of [fol. 372] sulphur at any special time, although when there is a special sulphur run on between Brimstone and Sabine Pass the cars are delivered usually between 7:00 p. m. and midnight, but there are cars delivered at all hours of the day and night.

I should judge that the big engine of the Brimstone could handle around 40 or 50 loaded cars at one time. We handle 40 and 50 loaded cars with our road engines, and that is a pretty good sized engine the Brimstone has. It could handle around 70 to 75 empties at one time. There is no reason why the numbers mentioned—40 to 50 loaded cars and about 70 empty cars—could not be carried at one time from the Southern Pacific interchange to the sulphur plant for loading. (Rec. 1079-1081.)

I have not seen the Commission's exhibits in this case. I did not prepare Exhibit A-11, showing allocation; I simply marked the item from which the exhibit was prepared. I can testify as to it. As to why the yard locomotive is shown engaged in common carrier service from 10:27 to 10:31 a. m. on page 5 of my exhibit, in pulling 9 loads from S. W. bin to main, and as engaged in intraplant switching from 11:13 to 11:15 a. m., in pulling 3 loads from S. W. Bin to main: It is classified in one instance as common carrier service and in the other as intraplant for the reason that I was handicapped to some extent in classifying this time because it was not always possible to tell from the description of the performance of the engine just what kind of service it was engaged in. My idea was to charge to plant service all service in connection with the loading of cars on the bin track that were afterwards taken to the box car loading plant and transferred to box cars, and to charge to carrier service only the time consumed in spotting and pulling cars upon which the carrier would enjoy a haul. [fol. 373] In other words, I tried to separate the movements between the bin tracks and the box car loading plant and back from the bin tracks to the outgoing line and the placing of the cars on the outgoing line. It was not always possible to determine definitely where the cars were going at the time they were pulled, and I presume Mr. Elmore had the same difficulty, as neither of us was there when the engine was performing the service. (Rec. 1081-1083.)

There is an error on page 7 of the exhibit which would reduce my common carrier allocation 60 minutes and increase intraplant switching 60 minutes. (Rec. 1083.)

As to why the spotting of empty gondolas for loaders at S. W. bin from 12.46 to 1.15 p. m. is allocated to common carrier service, while the identical entry from 1.25 to 2.53 p. m. is allocated to intraplant switching: I tried to follow the engine in its service, and whenever it was going to the box car loaded, I gave it to the plant, and whenever it was going outbound over the carrier, I gave it to the carrier.

I could not say if it was a proper common carrier service or not, if the tracks of an industry are insufficient to hold all the cars it orders and it is necessary to place them on storage tracks and move them a second time, but we do it regularly. I do not think the carrier has complied with its full duty when it delivers the cars at a reasonable point of interchange. (Rec. 1081-1084.)

There is no loading of sulphur on Sunday. If the Southern Pacific was operating the tracks of the Brimstone, they probably would not have an engine up there doing the same work on Sunday that the Brimstone engine does. [fol. 374] We would have had no occasion to be there on Sunday unless there were cars to be spotted for Monday loading or something of that kind. We do perform spotting service on Sunday at industries that do not work on Sunday. I do not recall if I classified practically all of that work on Sunday as common carrier.

On my exhibit, where it says "from main" those are the blue tracks. They have hold tracks alongside of the main tracks, which are in blue also, but one is the main line and then there are some other tracks there that are side tracks or hold tracks. There is a difference between a main and a hold track. Hold tracks are auxiliary tracks or storage tracks.

In cases of this kind, so far as the Southern Pacific is concerned, sometimes standing orders for cars are placed and sometimes specific orders, depending on how they load. We have both. Some industries have standing orders with us and others have specific orders. When the Sulphur Company is loading heavily, which is a large part of the time, we handle from 35 to 45 gondolas each 24 hours, and the box car loading is spasmodic—sometime 8 or 10—sometimes nothing.

In the particular instance we have in mind here, switching by the Brimstone there to the loading tracks, the Sulphur Company does not place any orders with our line for cars. All of these cars belong to the Brimstone—I am speaking of the gondolas—which are the cars that are loaded on the bin tracks. As soon as they are made empty at Sabine Pass, they are immediately returned and delivered to the Brimstone, and they do not order any cars from us except box cars, and that is spasmodic. In allocating [fol. 375] this particular time, whether it was plant service or carrier service, it would be important to know whether or not the Brimstone received any orders from the Sulphur Company. As to why so many cars being loaded each day, 35, 40 or more, and so few pulled away under load, at so many different times during the day: You understand that at times they are loading box cars, and the sulphur is loaded into the gondolas on the bin tracks, pulled out and moved over to the box car loading plant and unloaded into a hopper there and transferred into box cars, and they can handle one or two or three cars at a time for that operation, and the engine has to hold on to those cars at the box car loading plant while they are being unloaded. That service was all charged to plant service, which I considered proper. Cars that came in off of the line of road empty, were spotted at the bin, loaded and moved out over the line of road, I endeavored to classify as carrier service. Now, it was difficult from that study to always be able to tell whether the cars were going out on the line of road or whether they were going to the box car loading plant, and I had to follow the movement of the engine in my own mind from a description and endeavor to determine that. However, I may have made some errors in both directions. I may have charged some little time to the plant that should be carrier and I may have charged some to carrier that should have been plant. (Rec. 1084-1088.)

There is no room on the loading tracks at one time to take care of a day's loading, and the loader moves along on its own power. It is not necessary to pull the cars by the loader, because the loader moves on its own power to the cars; 35 or 40 cars, or whatever the number may be, could [fol. 376] have been put in there at one time. Our record does not show that that many cars were placed in there at

one time. Some of the cars are placed in there by another engine, the time of which is not considered in this study. I cannot account for the fact that so few number of loaded cars are moved out each time—8 or 9—except that they have a small engine. They have a small saddle tank engine and its pulling capacity is limited. From that I do not necessarily intimate that those loaded cars would not have to be pulled out in order to load the other empties. It is more convenient to handle them in small lots, because when the sulphur is shot down from the pile, naturally it comes down in a space of 4 or 5 or 6 car lengths, and it is more convenient to load from that restricted area. It is more convenient for the Sulphur Company. That could have been overcome by shooting down more sulphur, for the whole face of the bin, and then they could have loaded anywhere. That is a sulphur convenience. The explanation as to why so few cars are pulled out each time is that the pulling capacity of the engine is limited—they have a small engine. The explanation as to why they did not place the day's empties, or half a day's empties, at one time was sulphur convenience. It is not impossible. They have the engine there and are using it. (Rec. 1088-1090.)

Redirect examination:

In our operations on the Southern Pacific in the case of industries located on that line, we do not require them in every instance to have a sufficient number of loading tracks in order to make deliveries of all cars that they need at any [fol. 377] one time. Where they do not have sufficient track to hold all the cars they order, we put them in a hold track or some other track, so that they can be moved in conveniently when they are ready for them. The general practice is for the carrier to take them from the hold track and put them in the plant. I see no difference between that practice and the practice of the Brimstone in the placing of these cars from the hold tracks to the loading places at the bin.

As to what the Brimstone engine would be doing in the meantime if it handled 35 or 40 cars, I do not quite know how to answer that, because I would not have an engine standing around there waiting for them to load them. I would have it doing something else. Assuming that the

engine placed 35 cars at one time in the bin, there would be nothing for it to do until it was time to take the 35 cars out, unless it was doing some plant switching. There would not be any economy in operating that railroad in that manner.

Where the industry requires the placement of cars, it is the practice of the Southern Pacific to generally have a program to get about the same switching at the same time every day. They vary from that, of course, some, but each foreman assigned to industry work has, as a rule, a routine for his day's work, to get around once or twice a day, or 3 times, as necessity requires, but at stated intervals. In other words, we endeavor to give the most convenient service to our patrons that we can. We have no one industry on the Southern Pacific where we maintain a switch engine to handle its business in this way exclusively.

As to whether I consider the fact that an engine would be obliged to remain idle for some time each day any reason [fol. 378] for not having it haul a maximum drag at one time, and that being the fault of the industry more than of the carrier: It would be just a matter of opinion on my part. I do not know. There would be no reason for its not hauling a maximum capacity; neither would there be any particular reason for its doing so. I would prefer, if I were in charge of the work, to haul the maximum capacity of the engine. Absolutely, that is the economical movement, and that is the way railroading is usually conducted—by hauling out the maximum drag. (Rec. [rec. 1063.)

I was with the Southern Pacific when the switching service at the mine was performed by that company prior to the incorporation of the Brimstone, but in an office capacity at Lafayette. I have no knowledge of what the Southern Pacific did then, except I know we did their service, performed their switching, and I have been at the sulphur mine at the time that our crews were in there doing the switching. There was no extra charge made by the Southern Pacific that I know of; I am quite sure there was not.

If a maximum drag was hauled at one time, I do not think it would be necessary for the Brimstone to maintain another engine there.

In allocating my time I have considered the hold track and the main track as the same thing. In other words I figured that a car getting to or from the main or the hold track was a car either coming in off of a line haul or going out over the line and that the carrier enjoyed a haul on it and was entitled to place it and pull it without extra charge. My statement that I considered it more economical to handle a large drag of cars at one time than to handle them in small drags is based on the fact that that engine [fol. 379] might in the meantime be doing other service, because in our operations on the Southern Pacific lines, we do not have switch engines standing around idle. We have something for them to do. In the case of a large industry, furnishing practically all the entire tonnage, where that tonnage constitutes the common carrier operations of the railroad, I would say there was no economy in handling the cars in large drags over handling them in small drags, if they had to have the engine there. You would not have to maintain two engines though. The cost would not be very much different in having the engine pulling two drags of cars over it pulling one drag and standing idle the rest of the time. The only thing that could be considered in there would possibly be some little difference in fuel. The wages would be the same. (rec. 1093-1095.)

As to the practice of the Southern Pacific in connection with a short tap line like the Brimstone, in performing weighing services: I cannot definitely tell you about that, it performs the weighing services itself, or accepts the weights of the short line. We weigh all cars that we can naturally. Where it is not convenient to weigh the cars, we will accept the short line's weights of the industry's weights. We have different practices with reference to that. I know of no necessity why the trunk line could not perform the weighing services.

It is the general practice wherever the initial line has a scale to weigh the cars in order to get the correct billing.

In reference to the handling of these small drags of cars, I have examined these exhibits and know that there is a movement both via the Southern Pacific and Kansas City Southern interchanges. I do not think that would make it [fol. 380] necessary to handle these cars in smaller drags if it all went out through one connection with reference to

the gondolas, because they do not move via the Kansas City Southern. I was only speaking of the gondolas when I made that statement. They are the only cars loaded on the bin tracks.

I have seen them weigh cars down there at Sulphur but I did not pay any particular attention to it. They have 2 scales. They have a track scale on blue track in zone 1, running outside of the bin tracks, and they also have a track scale in zone 3, on the black track. One of these scales, the one in zone 3, is used, as I understand it, to weigh all outbound shipments. The scale on the black track in zone 1 is simply used to weigh gondolas that are to be transferred to box cars, to prevent overloading. It is not, as I understand it, a scale in very good condition. Its weights are not absolutely correct,—that is they would not be accepted as correct by carriers, whereas the other scale is tested and kept correct. I could not tell you if there was an adjusting scale at the second scale, in zone 3, or that they adjust that as they load the sulphur. I do not recall seeing them weigh any sulphur on this zone 3 scale, in gondola cars. (Rec. 1085-1087.)

C. L. Werner, Civil Engineer, New Orleans, testified:

I was one of the receivers of the Texas & Pacific Railway during the entire receivership—about 7 years—and left its employ at the close of the receivership, about 8 or 9 months ago. During that time, I had charge, with Mr. Lancaster, of the operations on the entire railroad. I had something to say about the practices and policies of that company during that period. I am familiar with its opera- [fol. 381] tions in Louisiana and the territory through which it operates, and know the services it performs. Those services came directly under the supervision of the general manager, who was the man we looked forward to, but the matter of policies always came to us. I think I know the practices of the company in regard to services performed, either on line haul rates or terminals or for industries. The Texas & Pacific serves a great many industries of importance in Louisiana. In Louisiana, those industries are principally sugar mills; there are lumber

mills on the line also. I have been here during Mr. Glover's testimony, and heard his testimony concerning the services performed by the Southern Pacific—what they would perform under line haul rates for industries located on their line, in regard to placing and taking cars.

I think the service performed by the Texas & Pacific in regard to placing cars for loading or taking out loaded cars was the same as all companies, so far as I know, in that it was the placing of the empty cars for loading and the removing of the cars after loading for line haul. It depends on the industry as to the point where the cars are placed for loading. The sugar industry is a little different than any other industry, because the tracks serving the sugar mills are sometimes 2 or 3 miles away from the main line and it is a rather unusual service. In that case, it has been customary to place the empty cars, in most sugar mills, at some agreed point on the industry's track, which might have been near the main track or might have been half a mile away, and to take them out from that agreed point. That point was fixed by agreement between the shipper and the carrier as the point of delivery or loading. In cases [fol. 382] where the industry was adjacent to or close to the tracks of the Texas & Pacific, it was our practice to place them at the loading point—a point designated by the industry, and take them out from that point.

In cases where a shipper ordered more cars than could be loaded within a specified time, or where we delivered cars in a greater number than could be loaded at one time, our practice was to leave the excess cars on storage tracks or hold tracks at the nearest available point or nearest terminal, as the case might be. They were taken from these hold tracks by the Texas & Pacific and placed by them at the loading point. That point would be the usual place of loading and unloading as designated by the shipper. (Rec. 1098-1102.)

Cross examination:

I did not testify in this case before. It was last night or this morning I knew I was to testify here today.

I do not think when a common carrier has placed cars for loading or unloading at a convenient point of interchange that its full duty as a common carrier has been

performed. If all business in the United States could be operated on a schedule basis, and you had the same character of business every day in the year, something like that might be done, but there is too great a fluctuation in volume of business to work out a plan of that kind that would permit the industry to really take care of its own business. From my long personal experience in handling railroad matters—20 odd years—I have always adopted the practice of trying to encourage the industry to build up its business. Sometimes you have to locate an industry in the country, away from the ordinary terminal service. The only [fol. 383] thing that we can do for that particular industry is to do everything that the railroad is equipped to do to keep them in business in competition with whoever might be making the same stuff that they do. Now they will start in with one car, probably, a day, and develop into, like the Union Sulphur Company, say, 45 cars a day. When they start in with one car, we usually perform the service in one way, and when they get 45 cars it is another way of spotting the cars and taking them off of those tracks. I consider it the duty of the railroad to do everything possible to help that fellow build up his business, because if he does not prosper and move freight there is no particular use for that railroad, because that is the only business they have got. That has been my policy from the beginning, in my experience in railroading, which covers several different railroads.

Ordinarily I regard a second movement from the storage or hold tracks to the loading plant as a common carrier service. There are some cases where I would doubt that.

On the weighing of shipments, the Texas & Pacific would be a very poor example as to a matter of policy, but I will be glad to tell you what they do. The both accept the weight of the initial line and the industry and sometimes they do the weighing themselves. It is entirely a matter of the convenience and the location of the scales, but regardless of the location of the scales, it is the practice of the Texas & Pacific to have the industries' or tap lines' privately owned scales tested by the Western Weighing Association, which is the same association which handles the testing of the Texas & Pacific scales. Recently they have [fol. 384] had their own scale test car, but prior to that time it was all handled by an association.

When switching is performed for an industry, the convenience of the industry comes first and that of the railroad second. (Rec. 1102-1104.)

Mr. H. W. Bell, Engineer, Minerals Division, Department of Conservation, State of Louisiana, testified:

My position covers the conservation of oil and gas—to make it general—dealing particularly with keeping water out of the oil and gas deposits and preventing underground and surface wastage of oil and gas.

In my official capacity, I had occasion to examine the conditions existing at Sulphur Mine, La., relative to the exhaustion of the supply of sulphur at that place, and made a report concerning those conditions.

Exhibit A 15, Witness Bell, was received in evidence.

The facts stated in this report are facts which were ascertained partly from my own personal investigations. I visited the mines and inspected the conditions there, and made an examination of the records. This report is based partly—not entirely—on my personal investigation. I do not wish to change this report any at this time. The report was made to W. J. Everett, Commissioner of Conservation, and is an official document, part of the records of the State of Louisiana. (Rec. 1105-1107.)

[fol. 385] Cross-examination:

As to what part of this report is not based on personal observation: These production figures, production of sulphur, is not based on my personal observation, nor is the thickness of the sulphur bearing zone. That is taken from the records. The number of wells drilled I took from the company's records. In fact, quite a few of these items in here were taken from the company's records. "Observed Facts" really shows what I could swear to from information gathered myself by original investigation. This kind of an investigation of wells is underground, and you cannot see it and you have to take it from the records of the company that drilled the wells. I saw a number of cores showing the sulphur bearing zone, etc., and from that and

talking with officials, I was able to arrive at a figure for the percentage of sulphur in the sulphur bearing zone. It is not susceptible of absolutely accurate determination, and one has to assume a certain figure to get anywhere with an estimate. (Rec. 1107-1108.)

Statement by Mr. Barrow: We are simply showing by this witness the present condition of the sulphur deposit. (Rec. 1109.)

After my study and investigation, I concluded that the sulphur deposit at Sulphur was exhausted as far as economic operations were concerned. When I was there, January 20, 1925, the plant of the Union Company had closed down operations. (Rec. 1109.)

W. R. Keeven, Vice-President in Charge of Operations, Union Sulphur Company, testified:

I have been connected continuously with the Sulphur Company since January 1905, and have been at the sulphur mine in Louisiana during the entire period. I am familiar [fol. 386] with all of the operations of the company, and its properties and buildings at Sulphur. The Sulphur Company has closed down its operations at Sulphur Mine since December 1924. Since January 1, 1925, we have not mined any sulphur there. The company has moved some of its plant away, and is still dismantling and moving the plant. There is approximately 80,000 tons of sulphur on top of the ground to be transported. Our loadings run about 40 tons to the car, and my estimate is that the sulphur will be all shipped in 1926. The Sulphur Company owns property at Sulphur Mine, but it disposed of the sulphur-bearing area in December, 1924, to the Calcasieu Realty Company. To my knowledge, that is not a mining corporation. We are shipping sulphur at the present time over the Brimstone, and at the present rate of shipment all the sulphur will be shipped out by the end of 1926. The Union Sulphur Company does not contemplate the resumption of operations in the old producing area. To my knowledge, our sale does not retain any mineral rights or rights to operate a sulphur plant in that area. (Rec. 1110-1113.)

Cross-examination:

I have been vice-president of the Sulphur Company since 1918. I am also general manager of the Brimstone and have held that position the same length of time. It was a foregone conclusion that at some time the mining of sulphur would stop. Prior to 1924, it showed I would say for about 6 months before that we were running pretty close to exhaustion.

[fol. 387] Since the closing down of the mine we use the Kansas City Southern practically the same as we always have—for what inbound freight we have and what sulphur is shipped out by their line. Oil is used for fuel in the mining of sulphur. That oil does not come in any more, but the Kansas City Southern did not enjoy all of the traffic on oil. More has come in, I expect, over the Southern Pacific than over the Kansas City Southern in the whole life of the plant. A part of it was brought in by pipe line. I imagine there is very little difference in the division of the business since the plant shut down. There is no fuel oil coming in now over any road. We have enough oil there on hand to complete the operations (Rec. 1113-5).

Mr. L. W. Pettit, Valuation Accountant, Brimstone Railroad & Canal Company, Sulphur Mine, La., testified:

I have been in the employ of the Brimstone since January, 1923. I have access to all their reports and records. I have made a table showing the amount which is necessary to amortize the amount claimed by the Brimstone as the charge to its operating expenses annually; it is page 13 of Exhibit A-13. The amount on which the amortization was based was arrived at by taking the investment account as of December 31, 1924, accrued depreciation account as of December 31, 1924, and estimating the salvage value of the materials as of 1926. From the investment account we deducted the sum of the accrued depreciation and the salvage, which left a total of $104,612.84, and on that amount we based our amortization. That is the amount which it is necessary for the Brimstone to recover in order to save its investors the amount of money which they could

[fol. 388] not get back if the road were abandoned at the end of its prospective life. I covered a 21-year period—from incorporation of the company in 1906 until December 31, 1926 (Rec. 1115-1117).

Cross-examination:

The percentage of depreciation on the property is an arbitrary percentage. It is the total which was approximately the amount which we claim to be the value of the road material on hand when we ceased to operate. The way the statement is prepared it is an arbitrary percentage and the total of the salvage is the same.

$4,981.58 is the amount that should have been charged off yearly for amortization. We did not take advantage of that and we have not so far included that. Those figures are reflected entirely by the Brimstone's books and records of accounts. I do not know whether or not any claim such as we set out here was made in a prior cost study of the Brimstone. In estimating this annual amortization charge of $4,981.58 over 21 years to arrive at my net investment figure of $104,612.84, I don't think any account was taken of increment on that money put out at compound interest. If $4,981.58 was invested at compound interest at, say, 5% per annum, I don't think it would take anywhere near that number of years to make a total of $104,612.84 (Rec. 1117-19).

I have read the Commission's reports in this case.

"Q. Well, in the Commission's first report in this case, 68 I. C. C., at 382, it found that dividends of 100% in 1914 and 60% in 1917 and 40% in 1918 had been declared by the Brimstone Railroad & Canal Company and that a credit [fol. 389] balance in profit and loss of $165,378.82 was shown in its annual report as of December 31, 1920. Now, if these excessive dividends had not been declared in the years mentioned and some of these large earnings had been set aside to amortize the investment in road account, when the road ceased operation it would not be necessary to claim an annual charge for amortization, would it?"

(Question objected to, and objection overruled).

"A. Well, my opinion is that dividends have no bearing upon this claim. The charge never has been made and I believe it should have been made yearly" (Rec. 1119-1121).

This would not be coming along at the last minute and making the claim had we known that we would have to close down during 1926. It has been done during the time allowed by the Commission for the Brimstone to file its exhibits in this case. It is my opinion that the question of amortization as set up by the Brimstone has no relation to the amount of money which the investors in the property are entitled to earn during the life of that property, aside from getting their money back which they put into the property, at the end of that time (Rec. 1121-1122).

Mr. J. T. Ellis, Master Mechanic, Union Sulphur Company, testified:

I am familiar with the operations of the Brimstone and with the records and accounts of the Union Company in regard to car equipment and car repairs. I know what work was done and when it was done by the Union Sulphur Company.

With respect to the adjustment of Account 1226, "Car [fol. 390] Repairs", by deduction of $3,450 by Commission's representatives, and the manner in which the wheels of the Brimstone's cars were replaced by steel wheels: In 1923, when the Union Sulphur Company took over the repair work of the Brimstone cars for the Brimstone, I discovered that a great many of the wheel defects were due to chipped flanges or chipped rims and broken flanges, and I recommended to Mr. Keever that we try out some steel wheels as a matter of economy. In that year, I think we purchased 200 wheels—steel wheels. We had a number of cast iron wheels on hand which had been removed from cars, defective, and we removed those wheels from the axles and put on those steel wheels, and as occasion demanded, we used steel wheels instead of cast iron wheels. When the cars were bad ordered on account of the wheels, we made the change from cast iron wheel to steel wheel—when it was bad ordered by the inspector. I cannot recall any car coming in with one bad order wheel. When the car came in with a bad order wheel, we would take a truck out and change the wheels. Of course, we would change a pair of wheels at a time. I cannot recall of any instance where

we changed more than one pair of wheels at a time. The usual cost of the change was a good deal less than $100—the cost of labor and wheels combined. The labor is about $3.00 in changing a pair of wheels, and I think the cost of the wheels is $39 each. Of course we had the axles. I recall no instance where both the cost of the wheels and the labor was over $100. Of course, there was some salvage value to those cast wheels (Rec. 1122-1125).

The Union Sulphur Company began doing the work for the Brimstone in 1923. Now we have gone back to the cast iron wheels. The last we bought were cast iron wheels. [fol. 391] That is because of the opinion that we will not have the Brimstone after 1926, and as there is quite a difference in the price, we discontinued the use of steel wheels. We have quite a number of steel wheels on hand, which we will return.

It is a little difficult to arrive at the salvage value of these wheels replaced; that is, for instance, if both wheels are bad, they are only worth junk prices, but if you remove a pair of wheels and one of them is good, it is just a lit'le bit difficult to arrive at what they would be worth. I have not given that any thought. The wheels do not have any such salvage value as $12.51 per wheel as stated in the Commission's exhibit. One of these wheels weighs 725 pounds, and the salvage value is, say, $9.00 a gross ton, f. o. b. cars.

Car wheel junk is sold on basis of tonnage. I never heard of car wheel junk being sold on the basis of so much per wheel. We sell them on a tonnage basis. The price is $9.00 per gross ton. It is, I think, $17.50 delivered at St. Louis, and we have a freight rate of $7.85 per ton.

That is scrap iron I referred to—cast scrap. Nothing but car wheel people use wheels. The founders do not take wheels at all—that is, the machinery casting people. Sometimes the car wheel scrap is sold separately from the ordinary iron scrap and sometimes it is not.

We have the old wheels taken off on hand. We have not sold them. As to what basis was used for the scrap price of 1923 shown on the Brimstone's exhibit as $18.50: That [fol. 392] is 138 cast iron wheels, scrap wheels, 725 pounds each, weight, 100,050 pounds, or 44.1 gross tons, at $18.50 scrap price, less freight at St. Louis, $7.85, handling cost $33.66, net salvage value $436.09.

I do not know how the Commission's representatives arrived at a salvage value recovered of $12.51 per wheel. They were never sold on that basis. We never received payment on any basis that would figure up to that.

During the same period, we replaced cast iron wheels with cast iron wheels and we did not make it a practice to replace all cast iron wheels with steel wheels. I do not know that replacement was divided between cast iron and cast steel wheels when we replaced the cars with one or the other. I have no record of that. For instance, if we removed a pair of wheels from a car and one wheel had a chipped rim or broken flange, or vertical flange, —whatever it may be—we would shove those wheels off the axle and then mount the axle with steel wheels. Now, one of those wheels would perhaps be good, and then we would mate the wheels up and caliph*er* our axles and wheels and shove those wheels on the axles to recover what service we could. We did not throw any cast iron wheels away that had any more service in them. We saved the good ones, matched them up and put them back under a car. (Rec. 1125-1130.)

[fol. 393] Cross examination:

I am not an accountant. About 25% of my time is in the employ of the Brimstone at this time. I don't know how many cast iron wheels were removed during 1923; 138 was an estimate that we arrived at. We bought 200 wheels in 1923—100 in about June and 100 in October. Those 100 wheels were used up when the next lot arrived, and in March, 1924, we bought another 100. In May, 1924, when the Commission made their study, they called on me for the number of wheels I used in 1923. I had no record, except the record I submitted to Mr. Boltwood, which I kept for my own information. This showed the date these wheels were applied to the car, the numbers of the wheels, which are stamped on them. I did that to figure them against the cast iron wheels as to service. Now, the discrepancy in the figure that Mr. Boltwood has is due to the fact that we have a car repairer down at Brimstone and a great number of these wheels were replaced down there at the sulphur bin. If there was a car at that time needing nothing else except wheels, they would change them down there. However, if there were other defects in the car, they would send the

car to the shop and we would change the wheels there along with the other repairs that were necessary. That is where that discrepancy comes in. I am not sure about the 138 wheels. It may have been more than that or a little less; it is just an estimate. (Rec. 1130-32.)

I did not keep track of the wheels that were removed at the sulphur bin. If we applied 138 during the year, that would average close to 12 a month. I cannot see that I should call that a regular improvement program.

[fol. 394] I don't know the value of the used wheels we put back during the year. In retiring the old cast wheels, all the cast wheels removed were not scrapped. Some of them were mated and put back on cars. I don't know how many serviceable cast wheels were on hand when we discontinued the use of the steel wheels. We did very little car work prior to 1923. It is not the practice of the Brimstone to credit operating expenses with any second-hand or scrap value of materials. The second-hand value of the cast wheels on hand now is about $765, on the basis of $9.00 per gross ton—net salvage value.

We had on hand about 250 cast iron wheels, scrap wheels. We based our scrap value on St. Louis because that is the only price we have. I got those prices from the Iron Age, and if we sell those wheels to junk dealers, they will not be that much because we sell them scrap and they ship it to St. Louis. We have sold our scrap—there is a scrap movement on now. However, we did not sell these wheels. We retained those from our scrap pile and will handle those separately. I am sure there is a market for those wheels in New Orleans or Houston. The foundries do not always take cast iron, however. They may be overstocked. When a wheel is scrapped, when it is condemned by the inspector, its total service life is exhausted, and a salvaged wheel is one that has not been condemned. I had nothing to do with the preparing of the inventory shown in an appendix to Exhibit A-4. (Rec. 1132-1135.)

Mr. G. H. Bacon, Assistant Comptroller, Kansas City Southern System, was recalled and testified:

[fol. 395] In Exhibit A-13, page 3, we show the adjustments we considered proper to reduce the operating ex-

penses to a reasonable necessary basis. A corresponding set of figures appears on the Commission's Exhibit a-4, page 3, under the same heading, "Operating Expenses." The difference between us on Maintenance of Way and Structures is $2,732.90. This reallocation is fully covered on page 5, Exhibit A-13. Briefly it is that the Brimstone takes the position that the actual expenses of maintaining the particular tracks covered by Account No. 1208—"Maintaining Joint Tracks, Yards and Other Facilities," is the fair basis, rather than an arbitrary basis on a hypothetical average of other tracks of the Brimstone and of common carrier tracks in this section of the country.

The records during 1913 (1923) for the months of February to December show exactly what was spent on these tracks, and adding to that an average for January based on the actual for February and December, it gives what might be termed an actual out of pocket cost to the Brimstone. This expense was, I believe, in the first instance incurred by the Sulphur Company and then billed against the Brimstone at a higher figure, but we have reduced the actual billed amount down to the actual out-of pocket money.

The next account is "Maintenance of Equipment," on which there is a difference between the readjustments of the Commission and the Brimstone of $3,014. That difference is due entirely to the reallocation of Account No. 1226—"Car Repairs," and is caused by the question of the steel wheel versus the cast wheel, which has just been gone into, and I won't comment on it.

The next difference is in Traffic Expense, of $13,277.86. I might also include in that the difference of $3,999.07 under [fol. 396] "General," inasmuch as the Commission used the combined basis in arriving at its figures. These differences represent the difference between the actual figures charged to those accounts by the Brimstone through its monthly entries, based on the judgment of its authorized officers as being a proper allowance for the services rendered the Brimstone, and an arbitrary assignment of the lump sum in Commission's Exhibit A-4, as explained by Mr. Elmore. We do not feel that the basis used by the Commission in

arriving at their arbitrary allowed amount is proper. I do not see how traffic expense, particularly, can be governed in any way by the expense of maintenance of way and structures, maintenance of equipment or transportation. Those expenses on a railroad are controlled entirely by the conditions. For example, maintenance of way and structures in a mountainous country is bound to be much higher than in a level country. Maintenance of equipment is the same. Transportation expenses can vary according to conditions and localities, whereas traffic expenses are governed very largely by the nature of the commodity handled and the territories to which it moves. (Rec. 1136-1138.)

There are examples in Elmore Exhibit A-4, page 26, of ore roads. That commodity can move to only a very few points—usually into a smelter. It is not necessary, therefore, to have an elaborate rate structure to various states, but simply rates from the mine to the smelter point. They might be carried in only one tariff or one issue. There are other roads of the same kind. The same with zinc ore. The same way with coal roads. In a great majority of cases, coal is controlled to a certain territory, with the exception of, perhaps, anthracite coal. You will not find bituminous coal originating in one district of the country shipped into another district. Consequently, they do not have to have rates from one coal field to another. I mean that coal does not move as far as sulphur, generally. I mean by that, for example, the coal mined in the Pittsburgh, Kans., fields on the Kansas City Southern would never move to the Atlantic coast points. It would not even move to Illinois points, because they cannot compete with the Illinois coal fields. It is restricted in its territory until it comes in contact with another coal producing section, where the cost of transportation will outweigh the benefits—the difference in price.

[fol. 397]

Our position on the traffic expense is that a carrier must have a traffic department. The Brimstone has an industry producing a commodity moving to widely separated parts of the United States. They must provide rates in various issues of tariffs, they must keep in touch with the reissues of those tariffs, to see that the applications via various routes are not omitted in the reissues, and to see that the rates are kept in line with rates from other territories;

they have to keep in touch with the various rate hearings, Commission rulings, and be able to keep the rates generally lined up in the tariffs. This requires a man of thorough experience and ability. It would be necessary for him to have certain assistance in the way of office help and location, etc., and we do not feel that the fact that this man is located in New York has any bearing on this situation. In all probability, it is much more convenient and perhaps more economical to have him in New York, where he can get in contact with the heads of the rate departments of [fol. 398] the larger carriers of the United States and be in close contact with the Interstate Commerce Commission at Washington. (Rec. 1138-1140.)

Insofar as general expense is concerned, there is nothing unusual in the salaries paid the men on the Brimstone, which are charged to general expenses. We do not feel that the comparison of general and traffic expenses of the Brimstone, shown on Exhibit A-4, page 26, is of any particular significance. It has been my personal experience, from what contact I have had with small roads, that they pay very little attention, principally through lack of knowledge, to the classification of the general expense. In a great many instances you will find that the president or general manager looks after the tariff situation. They make some arbitrary charge, perhaps, of his salary between general expense, transportation expense and traffic expense, or perhaps they make no charge to traffic expense, which I think is shown in connection with Elmore Exhibit A-5.

As to the difference in transportation expense between the carriers listed on Exhibit A-4, Witness Elmore, at page 26, and on the Brimstone: I think that is shown more clearly on Exhibit A-5. For example, the last road shown on there, the Cornwall Railroad, has a mileage of 12.67 miles, and transportation expense for the year 1923 of $198,000 against 10 miles on the Brimstone with a transportation expense of $45,000. The difference in the revenue operation is only about twice as great on the Cornwall as on the Brimstone. The transportation expense on the Northampton and Bath Railway, 8.24 miles long, is $171,340 against $45,000 on the Brimstone. There are a number of cases in Exhibit A-5, filed by Mr. Elmore, where the

[fol. 399] mileage and the transporttaion expenses reflect practically the same conditions as I have just described. I would like to refer to the Deering Southwestern. In that case they show a general expense of $6,000 against a traffic expense of $4,987, with a mileage of 32.90 miles, while immediately following that, the Verda Tunnel & Smelter Railroad shows a general expense of $17,943 with no traffic expenses. You will find the same condition existing on the Lake Champlain & Moriah Railroad. That is mentioned to bear out my previous statement that the equalization of expenses as between general and traffic and other operating expenses by the small lines can hardly be taken as a precedent in establishing a general principle.

Following the adjustment of the 1923 operating expenses to exclude the items which we felt should be taken out to arrive at a reasonable cost, it was necessary to separate that reasonable cost as between expenses applicable to common carrier service and to intraplant service. In reworking the entire exhibit A-13, I considered all of the changes and reallocation of engine expense, the testimony of Mr Ellis regarding the car wheels and all of the other explanations which have been made by various witnesses today concerning these individual changes, and my study was based upon the changes as described by them.

In the separation of the reasonable and necessary cost of operation for the year 1923, which is brought to a total on page 16 of Exhibit A-13 as between common carrier and intraplant service, certain differences exist between the Commission's Exhibit A-4 and the Brimstone's Exhibit A-13, in the allocation of the expenses applicable to intraplant [fol. 400] switching. These differences by general accounts are: Maintenance of Way and Structures, $4,565.73; Maintenance of Equipment, $240.47; Transportation, $2,969.47; and General, $1,138.10, making a total difference of $8,913.47. (Rec. 1140-1144).

The difference under Maintenance of Way and Structures account of $4,565.73 is explained on page 19 of our Exhibit A-13.

The difference under Maintenance of Equipment Account, Transportation and General Accounts, is due entirely to the reallocation of engine time, as explained by Mr. Glover this morning. We followed the Commission's for-

mula in the separation of the charges under these 3 account, but the reallocation of engine time naturally changed the factors, which in turn caused the particular changes mentioned.

I might mention here that we disagree with the Commission's plan of allocation of the expenses under Maintenance of Way and Structure Account, Maintaining Joint Tracks, Yards and Other Facilities, as they set it up in their exhibit. In allocating this particular expense between common carrier and intraplant service, the Commission used as a basis the tractive power hours of Locomotive No. 9, while not engaged in intraplant switching in Yard Zone 1 during the test period, and the total tractive power hours of both engines 9 and 10 while engaged in all classes of switching within the limits of Yard Zone 1 during that period. The expense in question applies only to the blue tracks as shown in Zone 1 on Exhibit A-1. The Commission, in separating this expense, has taken the tractive power hours which engine No. 9 spent within the bin on tracks that were in no way connected with the case insofar [fol. 401] as maintenance expense, or, in fact, any other expense contained in this cost study. If the expenses on the blue tracks mentioned were to be divided in any manner on a basis of tractive power hours, they should be divided only by the tractive power hours which the engines spent on the particular blue track. It appears entirely improper to use, as has been done in Exhibit A-4, tractive power hours made within the sulphur bin area on tracks which are in no way involved in the case, in apportioning the maintenance of other separate and distinct tracks.

In the allocation of taxes between common carrier and intraplant service, we used the same method as used by the Commission, the difference being due entirely to the factors due to the reallocation of the engine time. The Commission allocated a part of the joint facility rent expense to intraplant switching. It is our position that that is entirely common carrier service for the same reason as outlined for Maintenance of Way and Structures, Account No. 1208.

As to whether those changes I have just described being the only changes in the Commission's exhibits which would

make any changes in the result: We have added to our cost figures the amortization fund. We have also used return on investment on basis of the valuation figures presented by Mr. Kirkpatrick, against their figures taken, I believe, from the Brimstone's books. That is my recollection. (Rec. 1144-1146).

The Commission used the figure of $385,578.75 as the basis for a return of 5¾ per cent. That is derived from the book value as shown by the Brimstone's book of ac- [fol. 402] counts, less accrued depreciation on road and equipment.

On page 3, Exhibit A-7, the Commission shows a comparative engine time per loaded car for the years 1921, 1922, and 1923, the 1923 figure being the resultant figures after excluding intraplant service as found by Mr. Elmore. In 1921 and 1922, the Union Sulphur Company was performing at its own expense the switching service within the sulphur bins. The Brimstone figures for those years, therefore, do not include any time for common carrier service performed within Zone 1 by the engines of the Sulphur Company doing work corresponding to the work performed by engine 9 during the test period. The comparison on page 3 of Exhibit A-7 is, it thus appears, incorrect to the extent that the figures for the years 1921 and 1922 are understated (by) amount of time of the Union Sulphur Company engine performing common carrier service which should have been performed by the Brimstone and included in its report for those years. The same situation and remarks apply to the comparative figures on fuel oil as covered by the Commission's Exhibit A-8.

Respondents' Exhibit A-14 is separated into figures showing the traffic movement by years. The total cost of common carrier service in 1913 (1923), as previously determined in Exhibit A-13, including operating expenses and taxes, joint facility and equipment rents, amortization fund and interest on investment based on cost of reproduction new December 31, 1923, shows that the Brimstone should receive $224,057.39.

On the same basis of operating costs, taxes, etc., but return on investment based on cost of reproduction new less depreciation, the Brimstone should receive $216,584.63. We have reduced the annual amount which the Brimstone is

[fol. 403] entitled to receive to a per car basis on the basis of the total number of loaded cars interchanged with all carriers by the Brimstone during 1923, which was 24,620 cars. This shows a cost on the basis of reproduction new of $9.1006. On the basis of cost of reproduction new less depreciation, $8.7971. We then took the average for the years 1917-1923, inclusive, or 19,825 loaded cars, and arrived at the cost per car, using the same amounts as used for the year 1923, which shows that on the basis of the average for those years the Brimstone should receive, on basis of valuation, cost of reproduction new, $11.3017, while on the basis of valuation reproduction new less depreciation, $10.9248.

We have also shown this same information on the basis of the total loaded cars interchanged with connections during 1924, or 18,928 cars, which shows cost to the Brimstone on basis of reproduction new $11.8373, and on basis of cost of reproduction new less depreciation $11.4425.

We then took the average cost as determined on the basis of the number of loaded cars for 1923, and allocated the average cost as between the approximate cost to the Kansas City Southern or the Southern Pacific Company, using the same method used by the Commission in its allocation. The figures as shown on page 4 of Exhibit A 14 show that the average engine time consumed per car interchanged with the Kansas City Southern is 18.35% greater than that consumed in the interchange with the Southern Pacific. On this basis, the cost of delivery to the Southern Pacific on basis of reproduction new December 31, 1923, was $8.6223, and to the Kansas City Southern $10.2083, while on the basis of cost of reproduction new less depreciation, the [fol. 404] cost to the Southern Pacific is $8.3343 and to the Kansas City Southern $9.8674 (Rec. 1146-1149).

With reference to the difference in cost of delivering goods to and from the Southern Pacific on the one hand and the Kansas City Southern on the other: Speaking for the Kansas City Southern, we do not agree that the amount shown in either of these exhibits is the proper cost to the Kansas City Southern, and we do not claim that it is the proper cost to the Southern Pacific (Rec. 1150).

Cross-examination:

I do not think it is necessary for a road like the Brimstone to have a force of 6 or 7 operating and traffic employees in New York City. That is my personal opinion. The Brimstone has no occasion to solicit traffic—that is, in an outlying agency such as New York.

"Q. You discussed the Northampton & Bath Railroad to some extent, Mr. Bacon. I call your attention to the fact that that is not shown on page 26 of Mr. Elmore's Exhibit A-4. You understand do you not, that the 25 railroads shown on that exhibit A-5 were the short line roads which he considered in the first instance before making certain deductions which he thought did not make them comparable with the Brimstone?

A. No, I did not catch his testimony in that way.

Q. Well, that was the fact.

A. However, I merely used this exhibit to demonstrate the previous statements that I had made that in my opinion traffic expense, particularly, does not necessarily follow with the cost of maintenance of way and structures, maintenance of equipment and transportation expense. This [fol. 305] shows it as well as A-4, although I could give you some references to that too."

I am familiar with the blue tracks shown on Exhibit A-1 from T to U. That is a track on which the box car loaded and scale is located, and they use the track to get to and from the box car loader, and at the uppermost end they use it as a storage track. In a larger railroad, it is not usual that railroad work be done by the joint employees of the industry and the railroad; I could not answer that as to small lines. The Christie & Eastern is a case where some of the employees are also working in the interest of the lumber company. I do not know how their salary is divided, but I know that their interest is with the lumber company and they have titles with the railroad and do railroad work.

Our Exhibit A 14 is based on the theory that the allocation of time as between common carrier and intraplant switching service which we have made in an earlier exhibit is accepted by the Commission. We feel that it is

right and are presenting it to the Commission as what we consider right, and we naturally expect or hope to have them consider it. If they change our figures in any way it will result in changes in the results at which we have arrived. If the Commission changed it incorrectly, we would not consider it as proper. If the exhibit is incorrect as it stands, any changes made to put it on a correct basis would be proper corrections and the results would have to be proper (Rec. 1150-1153).

I stated that sulphur moved a greater distance than coal usually. From one coal mine to a destination within its radius of territory, as compared to a movement of sulphur to its radius of territory, the coal rates are much more simple than the rates on sulphur. I consider that coal [fol. 486] rates from one producing territory would not require as much traffic attention from a traffic manager as the sulphur rates. If you are speaking of the coal rate situation of the United States as a whole, it is much more complicated, because you have coal fields in every section of the United States, whereas the sulphur fields—dealing with the Union Sulphur Company—radiate out of Sulphur, La., to, I presume, every state in the Union. The rates on coal are more highly competitive than those on sulphur. There are more producing points of coal than there are of sulphur, and take *a* them over the United States as a whole, they are much more complicated. To a certain extent the point I made was that more attention would have to be given to sulphur rates because they moved to farther distant points and to a greater number of points than the coal. Here is what I meant: Take the producing field on our line at Pittsburg, Kansas. Their territory is limited to the State of Kansas, certain parts of the State of Missouri and perhaps some up in Nebraska. If that was the only commodity produced on our line, our traffic requirements would be rather simple to watch the rates to that narrow radius, while with a road producing only sulphur, which goes to every state in the Union, he has got the whole continent to watch—including Canada, for that matter. I did not mean to say that the sulphur rates were more complicated than coal tariffs.

I could not answer from my own knowledge as to whether sulphur is sold f. o. b. Sulphur Mine or f. o. b. destination.

Mr. Barrow: Mr. Keever is here and he states that sulphur is sold both f. o. b. destination and f. o. b. Sulphur Mine (Rec. 1153-1155).

(Leave was granted to the counsel for the Brimstone to [fol. 407] file, within 10 days copies of returns made by the Brimstone to the Commission for 1921 and 1922, relating to excess earnings, and to demands made by the Commission for the excess earnings for the year 1923; also a statement showing the investment as of June 30 of each year, beginning with the first year of the operation of the Brimstone, to June 30, 1916, and as of December 31 for each year from 1915 to 1923, inclusive, together with the dividends that have been paid for the entire period, showing the years in which paid.) (Rec. 1156-58).

(Permission was also given the parties to file exhibits within 30 days, the exhibit of the Commission to show the following information with respect to the Brimstone and the Brimstone representatives to furnish the same information with respect to the Southern Pacific tracks over which sulphur moves and over which sulphur does not move:

The location of tracks; Number of miles of main tracks;

Number of miles of yard tracks and siding;

Number of miles of all tracks. (The sum of the two preceding.)

Total number of cross ties in all of above tracks;

Total number of tons of rails in all of above tracks;

Total annual renewals of rails—in tons—in both tracks in 1923;

Per cent annual tie renewals in 1923 of total ties in both tracks;

Per cent annual rail—tons—renewals in 1923 of total rails—tons—in both tracks;

From which is deduced average life of ties in years;

From which is deduced average life of rails in years.)

(Rec. 1159-1160.)

Mr. W. H. Carnes, Examiner of Accounts, Interstate Commerce Commission, Houston, Texas, was recalled, and testified:

The results that were arrived at, shown by Elmore Exhibit A-4, Account 1226, "Car Repairs," are in accordance

with the text of General Account 2, Equipment, of the Com-
[fol. 408] mission's Classification of Investment in Road and Equipment, giving consideration to the Commission's order of January 14, 1921, which reads in part as follows:

If the total cost of additions and betterments to any class of equipment or any class of fixed improvements except additional or extension of tracks under a general plan considered as a whole is less than $100 the amount expended shall be charged to the appropriate account in operating expenses. This rule is not to be construed as authorizing the parcelling of expenditures in order to bring them within this limit.

(Rec. 1161-1162.)

[fol. 409] In United States District Court

[Title omitted]

Stipulation and Order Approving Statement of Evidence—Filed April 23, 1927

The parties, by their respective counsel, having agreed that the within volume, consisting of narrative of oral testimony and certain exhibits, and certain other exhibits in full, shall constitute a true and correct transcript of all of the testimony and exhibits introduced at the hearings held by and before the Commission in Docket No. 12969 (with the exception of the questionnaire and narrative of exhibits attached to the questionnaire, which Solicitor for the Brimstone Railroad and Canal Company does not admit was filed in evidence before the Interstate Commerce Commission), as the same appear in the certified copy thereof now on file with the Clerk, it is ordered that same be and it is hereby approved; and in lieu of the certified copy now on file, the Clerk is directed to include in the transcript of record and transmit to the Clerk of the Supreme Court of [fol. 410] the United States the within volume so agreed upon and approved.

New Orleans, La., April 20th, 1927.

R. W. Walker, Circuit Judge. Louis H. Burns, District Judge.

Monroe, La., April 23, 1927.

Ben C. Dowkins, District Judge.

Brimstone Railroad and Canal Company, by W. M. Barrow, Solicitor. United States of America, by Philip H. Mecom, Solicitor. Interstate Commerce Commission, by Philip H. Mecom, Solicitor. Louisiana Western Railroad Company, by Denegre, Leovy & Chaffe, Solicitors. Kansas City Southern Railway Company, by Wilkinson, Lewis & Wilkinson, Solicitors.

[File endorsement omitted.]

[fol. 411] In United States District Court

[Title omitted]

Opinion—Filed January 7, 1927

Before Walker, Circuit Judge, and Dawkins and Burns, District Judges

Walker, Circuit Judge:

By the bill in this case the plaintiff, the Brimstone Railroad & Canal Company, challenged the order of the Interstate Commerce Commission, made December 14, 1925, establishing divisions to it of rates jointly established by it and its two trunk line connections, the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, and making some of those divisions effective from the date of the institution of the proceeding, August 1, 1921, and others effective from July 1, 1922, when previously existing joint rates were reduced. Divi-[fol. 412] sions Received by Brimstone Railroad & Canal Company, 104 I. C. C. 415. The grounds upon which the order was attacked are stated in the opinion rendered when the plaintiff's application for a preliminary injunction was acted upon. Brimstone R. & Canal Co. v. United States, 13 Fed. (2d) 914. The case is now before us under a submission for a final decree. Again we have for consideration

the question whether the Commission had the right or power to make its order effective from the date of the institution of the proceeding or a date prior to that of the order. Under § 15 (6) of the Interstate Commerce Act as amended by the Transportation Act of 1920, (Comp. St. Supp. 1923, § 8583), the Commission has that power "in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commissioner and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial." The rates in question came into existence as results of increasing previously existing rates as authorized by the order made in Increased Rates, 1920, 58 I. C. C. 220, and of reducing previously existing rates as authorized by the order made in Reduced Rates, 1922, 68 I. C. C. 676. In each instance the carriers took action authorized by the Commission. The changed rates were not the same rates which existed before the changes were made. In establishing the new joint rates the acts of the carriers were pursuant to a finding or order of the Commission. The Act provides for the establishment of joint rates by carriers and by the Commission. Comp. Stat. Sup. 1923, §§ 8563 (4), 8582 (3). This being so, the above quoted language "established pursuant to a finding or order of the [fol. 413] Commission" cannot properly be given the same meaning the provision would have had if the language used had been "established by the Commission." We are of opinion that within the meaning of the above quoted provision the joint rates in question were established pursuant to findings or orders of the Commission. This being so, the Commission was empowered to determine what, for the period subsequent to making of the order of investigation, would have been just, reasonable and equitable divisions thereof to be received by the plaintiff, and to require adjustment to be made in accordance with that determination. This could be done without at the same time determining the divisions receivable by the other carriers which were parties to the joint rates in question. New England Divisions Case, 261 U. S. 184. It is quite usual for the judgment or order of a court or tribunal to establish rights or duties as of the date of the institution of the suit or proceeding. At the time of the institution of the proceeding which resulted in the attacked order it was the

duty of the parties to the joint rates in question to establish just, reasonable and equitable divisions thereof. Comp. Stat. Supp. 1923, § 8563 (4). Certainly Congress could empower the Commission to order compliance with that duty from the date of the commencement of the proceeding instituted for that purpose.

The fact that some of the divisions prescribed are of what are called proportional rates (§ 6 (13c) Interstate Commerce Act as amended. Com. Stat. Sup. 1923, § 85 (13) did not affect the Commission's power to prescribe divisions thereof, as a proportional rate may also be a joint rate within the meaning of the above quoted pro- [fols. 414 & 415] vision. Hocking Valley Ry. Co. v. Lackawanna Coal & R. Co., 224 Fed. 930.

We are of opinion that the attacked order was supported by evidence, and that it was not made to appear that the Commission failed to give due consideration to the things required to be considered in prescribing and determining divisions of joint rates. Interstate Commerce Act, § 15 (6), supra. The Commission's findings in question are not subject to be set aside by a court unless its action was arbitrary or transcended the legitimate bounds of its authority. It is beyond our province to consider the weight of the evidence or the wisdom of the attacked order. Seaboard Air Line Ry. Co. v. United States, 254 U. S. 57; New England Divisions case, supra. We conclude that that order is not invalid on any ground suggested, and that the bill should be dismissed. It is so ordered.

Dawkins, District Judge, respectfully dissents for the reasons given in the memorandum opinion on preliminary hearing. 13 Fed. (2nd), 914.

[File endorsement omitted.]

[fol. 416] In United States District Court

[Title omitted]

Before the Honorable Richard W. Walker, United States Circuit Judge, the Honorable Ben C. Dawkins and the Honorable Louis H. Burns, United States District Judges, sitting in the District Court pursuant to Urgent Deficiencies Act, 38 Stat., 219

Final Decree—Filed January 19, 1927

This cause came on to be heard on final hearing and was argued by counsel; and thereupon, upon consideration thereof, it was ordered adjudged and decreed:

1. That the order heretofore entered herein (dated May 31, 1926 and filed June 1, 1926) granting the preliminary injunction be and the same is hereby vacated and set aside and that the preliminary injunction heretofore issued pursuant thereto be and the same is hereby dissolved.

2. That the relief prayed in the amended bill of complaint be and the same is hereby denied and that the amended bill of complaint be and the same is hereby dismissed for want of equity.

Dated this 19th day of January, 1927.

By the Court.

R. W. Walker, United States Circuit Judge. Louis H. Burns, United States District Judge. ————, United States District Judge.

[File endorsement omitted.]

[fol. 417] In United States District Court

[Title omitted]

Petition for Appeal—Filed January 19, 1927

The Brimstone Railroad & Canal Company, Plaintiff, feeling itself aggrieved by the final decree entered in the above entitled cause on January 7th, 1927, and January

19, 1927, by its Counsel, prays an appeal to the Supreme Court of the United States from said final decree.

The particulars wherein the Brimstone Railroad & Canal Company considers said final decree erroneous are set forth in the assignment of errors, filed herewith, to which reference is made.

And petitioner further prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which the final decree was made and entered, duly authenticated, be sent to the Supreme Court of the United States under the rules of such Court in such cases made and provided.

And petitioner further prays that the proper order relating to the required security to be required of it be made.

James T. Kilbrath, Cullen R. Liskow, W. M. Barrow,
Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 418] In United States District Court

[Title omitted]

Assignments of Error—Filed January 19, 1927

Comes now the Brimstone Railroad & Canal Company, Plaintiff, through its Counsel, and in connection with its petition for appeal, files the following assignment of errors on which it will rely on said appeal to the Supreme Court of the United States from the final order or decree, entered against it on January 7th, 1927, and January 19th, 1927, in the above and entitled cause.

The District Court erred:

I

In not considering or deciding the various grounds of attack in plaintiff's bill of complaint, or giving any reason for denying relief as prayed for by plaintiff, with the exception of two grounds, namely: (1) That the joint through rates in effect on the Brimstone were not established "pur-

suant to a finding or order of the Commission;" and (2) That the divisions which the Commission sought to establish were not the divisions of joint rates, but were in fact proportional rates.

II

In not holding or adjudging that the Interstate Commerce Commission acted without evidence and arbitrarily in certain particulars hereinafter pointed out.

[fol. 419]

III

In not holding and adjudging that the said orders and reports of the Commission, and particularly the report, opinion and order dated December 14th, 1925, are illegal, null and void and result in the taking of the property of the Brimstone Railroad & Canal Company without due process of law in violation of the Fifth Amendment to the Constitution of the United States and should be set aside and enjoined for the reasons that: (a) The Interstate Commerce Commission did not investigate or determine the reasonableness or justness of the divisions under consideration or whether they would be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto and participating therein, and did not give consideration to any fact or circumstance which would entitle one of such carriers to a greater or less proportion than another carrier of the joint rates, as is required by Section 15, Paragraph (6) of the Interstate Commerce Act. (b) That the Interstate Commerce Commission is and was without jurisdiction, power or authority to determine or prescribe the divisions to be received by the Brimstone Railroad & Canal Company out of the joint rates, fares and charges received by it and the several carriers participating in said joint rates, except as between the carriers parties thereto, and except after a hearing and investigation of the operating expenses, taxes and other facts and circumstances connected with the operation of each of the several carriers participating in such joint rates as specifically set forth in said Section and Paragraph; (c) That the Interstate Commerce Commission was and is without power and authority to establish any divisions of joint through rates under Section 15, Paragraph (6) of the Inter-

state Commerce Act, except after it has established joint [fol. 420] through rates and charges for the transportation of property as provided in Section 15, particularly paragraph (3) thereof.

IV

In holding and adjudging that by reason of the changes which were authorized by the Interstate Commerce Commission in Increased Rates 1920, 58 I. C. C. 220, and Reduced Rates 1922, 68 I. C. C. 676, the joint rates in effect on the Brimstone were within the meaning of the language in Section 15, Paragraph (6) of the Interstate Commerce Act, "established pursuant to a finding or order of the Commission" in such manner as to authorize and empower the Commission to fix the divisions thereof for the period subsequent to the making of the order of investigation and prior to the date of the order fixing the divisions.

V

In holding and adjudging that the orders of the Commission, and particularly the order of December 14th, 1925, are supported by evidence, for the reason that there was no evidence before the Commission of the value of the railway property of the Brimstone Railroad & Canal Company held for and used in the service of transportation for the years 1924 and 1925, and the divisions prescribed by the Commission for those years were, therefore, fixed without allowing the Brimstone Railroad a fair return on its railway property held for and used in the service of transportation.

VI

In not holding and adjudging that the Commission failed to allow a fair return upon the fair value of the railway property held for and used in the service of transportation for the reason that the Commission failed to find the value of the railway property of the Brimstone Railroad & Canal Company held for and used in the service of transportation.

VII

In not holding and adjudging that all of the divisions received by the Brimstone Railroad from its connections

[fol. 421] by reasons of Section 15 (a) of the Interstate Commerce Act have been proportionately reduced before collection as the Government has, acting through the Interstate Commerce Commission, appropriated the excess net railway operating income of the Brimstone Railroad over six per centum of those years in which an excess net railway operating income was earned.

VIII

In not holding and adjudging that the report and order of the Interstate Commerce Commission of December 14th, 1925 would result in taking the property of the Brimstone Railroad without due process of law and confiscating the same in violation of the Fifth Amendment to the Constitution of the United States for the following reasons, to wit:

(a) As shown by the report and order of the Commission dated December 14th, 1925, and the record before the Commission, a total number of 24,620 loaded cars were interchanged by the Brimstone with its two connections during the year 1923, upon which year the Commission based its cost study made in 1924. On the basis of the divisions prescribed by the Commission in its report and order dated December 14th, 1925 the total revenue which the Brimstone Railroad would have received was $167,069.50 based upon the number of cars interchanged and the divisions prescribed in the said order of December 14th, 1925. The total cost of operation of the Brimstone Railroad after making all of the adjustments required by the Commission, including interest on investment as shown by the record, was $177,494.42, including accrued depreciation, thus leaving a deficit growing out of the application of the Commission's order of December 14th, 1925, for the year 1923, in the operation of the Brimstone Railroad of $10,424.92. As further shown by the record, the cost of operation as adjusted by the Commission, including interest on investment less accrued depreciation for the year 1923, was $167,877.07, which, deducted from the total revenues which the Brim- [fol. 422] stone would have received under the divisions prescribed by the Commission in its said order of December 14th, 1925, leaves a deficit in the operations of the Brim-

stone Railroad for the year ended December 31st, 1923 of $807.37.

(b) As shown by the report and order of the Commission dated December 14th, 1925, and the record before the Commission, it failed and refused to allow the Brimstone to charge as operating expenses an annual amount for the amortization of its property, even though the record showed that the life of the Brimstone Railroad was limited; and the allowance of which would show an additional and further deficit resulting from the operation of the Brimstone Railroad for the year 1923.

IX

In not granting the relief prayed for by the Brimstone Railroad & Canal Company, Petitioner.

James T. Kilbreath, Cullen R. Liskow, W. M. Barrow.

[File endorsement omitted.]

[fol. 423] In United States District Court

[Title omitted]

Order Allowing Appeal.—Filed Jan. 19, 1927

In the above entitled cause, the Brimstone Railroad and Canal Company having made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree of the United States District Court for the Western District of Louisiana, Lake Charles Division, entered on January 7th, 1927, and January 19th, 1927, and having at the same time filed an assignment of errors, and otherwise in all respects conformed to law and the rules of the Court;

It is ordered and decreed that the said appeal be, and the same is hereby allowed, as prayed for, and made returnable thirty days from date hereof. And the Clerk is directed to forthwith transmit a properly authenticated

transcript of the record, testimony, exhibits, papers and proceedings to the Supreme Court of the United States.

It is further ordered that the penalty bond on appeal be fixed at the sum of Five Thousand ($5,000.00) Dollars the same to operate as a supersedeas bond and also as a bond for costs on appeal.

Dated and signed Jan. 19, 1927.

R. W. Walker, Circuit Judge. Ben C. Dawkins, District Judge. Louis H. Burns, District Judge.

[File endorsement omitted.]

[fols. 424-426] Bond on appeal for $5,000 approved and filed Jan. 19, 1927, omitted in printing.

[fol. 427] In United States District Court

[Title omitted]

Order for Stay—Filed January 19, 1927

In consideration of the above Motion, it is ordered, adjudged and decreed that upon Mover furnishing bond in the sum of $3,000.00, the enforcement of the order of the Interstate Commerce Commission made and entered on December 14, 1925, be and is hereby stayed pending the appeal to the Supreme Court of the United States, allowed this day in this cause, and the Clerk is hereby directed to issue notices accordingly to all parties to this cause.

January 19, 1927.

R. W. Walker, Circuit Judge. Ben C. Dawkins, District Judge. Louis H. Burns, District Judge.

[File endorsement omitted.]

[fols. 428-430] Bond on stay for $3,000 approved and filed Jan. 19, 1927, omitted in printing.

[fol. 431] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed March 17, 1927

To the Clerk of the United States District Court, Western District of Louisiana, Lake Charles Division:

Please prepare a transcript of the record in the above case on appeal to the Supreme Court of the United States, containing the following items:

1. Bill of Complaint.

Exhibit A, Map of the Brimstone Railroad & Canal Company.

Exhibit B, Report of the Interstate Commerce Commission of April 4, 1922, in Docket 12,989, Divisions Received by the Brimstone Railroad & Canal Co.,

Exhibit C, Report and Order of the Commission of March 10, 1924, in the same matter,

Exhibit D, Application for rehearing on Order of March 10, 1924.

Exhibit E, Exception to the Jurisdiction of the Interstate Commerce Commission.

Exhibit F, Report and order of December 14, 1925.

2. First Amendment to Bill of Complaint.

3. Second Amendment to Bill of Complaint.

4. Order for hearing on preliminary injunction.

5. Subpoena and return thereon to the United States.

6. Subpoena and return thereon to Interstate Commerce Commission.

7. Subpoena and return thereon to Louisiana Western Railway Company.

8. Subpoena and return thereon to Kansas City Southern Railway Company.

9. Notice of hearing on application for interlocutory in- [fol. 432] junction.

10. Opinion of Court granting preliminary Writ of Injunction.

11. Decree granting preliminary injunction.

12. Note of proceedings before the Court on Final submission on November 19, 1926.

13. Motion of the Attorney General to dissolve the preliminary injunction.

14. Notice as to final hearing.

15. Narrative of the testimony and exhibits taken before the Interstate Commerce Commission in Docket 12,626, together with only such parts of the Interstate Commerce Commission's record and exhibits as are shown on attached memorandum marked "Brimstone No. 1," consisting of 2 sheets.

16. Opinion on final hearing.

17. Final Decree of January 19, 1927.

18. Petition for Appeal.

19. Assignment of Errors.

20. Order allowing Appeal.

21. Bond for costs and Supersedeas.

22. Order staying the enforcement of the Commission's order of December 14, 1925, pending appeal.

23. Bond for stay of Commission's order of December 14, 1925.

24. Order enlarging time for filing transcript until March 31, 1927.

25. Citation of Appeal, with service thereon.

26. This Praecipe.

27. Clerk's Certificate.

James F. Kilbreath, Cullen R. Liskow, W. M. Barrow, Attorneys for the Brimstone Railroad & Canal Company.

I hereby certify that copy of the above praecipe with attached memorandum marked "Brimstone #1" has this day been mailed to Blackburn Esterline, Esq., Department of Justice, and D. W. Knowlton, Asst. Counsel, Interstate Commerce Commission, Washington, D. C., and Denegre, Leovy & Chaffe, Attorneys Louisiana Western Railroad Company, New Orleans, and Wilkinson, Lewis and Wilkinson, Attorneys, Kansas City Southern Railway Company.

February 3, 1927.

W. M. Barrow, Attorney Brimstone Railroad and Canal Company.

[fol. 433] "Brimstone No. 1"

MEMORANDUM OF EXHIBITS TO BE INCLUDED IN THE TRANSCRIPT

The Clerk is requested to include in the transcript the following documents and exhibits filed before the Interstate Commerce Commission in the proceedings entitled Docket No. 12,686, Divisions Received by the Brimstone Railroad & Canal Company:

Order of the Interstate Commerce Commission of August 1, 1921.

Exhibit No. 13 (Weaver).

Exhibit No. 14 (Weaver).

Exhibit No. 20 (Fallon).

Exhibit No. 21 (Fallon).

Exhibit No. 23 (Fallon).

Exhibit, (2 Pages, Comparison of Divisions Received by Brimstone Railroad & Canal Company prior to April 1, 1919, effective April 1, 1919, also effective August 26, 1920.

Exhibit No. 24 (Bacon).

Exhibit No. 25 (Bacon).

Exhibit No. 26 (Bacon).

Exhibit No. 27 (Bacon).

Exhibit No. 28 (Bacon).

Exhibit No. 29 (Bacon).

Exhibit No. 30 (Bacon).

Exhibit filed 12/8/22 after the Memphis hearing at the request of the Examiner showing cost as developed by study made May 26 to June 1, 1922, inclusive, to the Brimstone for handling its interchange business with the Southern Pacific and the Kansas City Southern with return on investment based on cost of reproduction new as of December 31, 1921, also based on cost of reproduction new less depreciation as of December 31, 1921.

Exhibit A-1 (Elmore) (Map of the Brimstone Railroad and Canal Company used in cost study based upon test period May 21 to May 27, 1922).

Exhibit A-2 (Elmore).

Exhibit A-3 (Elmore).

Exhibit A-4 (Part I and Part II, Elmore).

Exhibit A-5 (Elmore).

[fol. 434-441] Exhibit A-6 (Elmore).
Exhibit A-7 (Elmore).
Exhibit A-8 (Elmore).
Exhibit A-9 (Elmore).
Exhibit A-10 (Elmore).
Exhibit A-11 (Bacon).
Exhibit A-12 (Bacon).
Exhibit A-13 (Part I and Part II, Bacon).
Exhibit A-14 (Bacon).
Exhibit A-16 (Bell).

Amended Return of the Brimstone Railroad & Canal Company to the Interstate Commerce Commission in re, Recovery and Payment of Excess Railway Operating Income, for the Period from March 1, 1920, to December 31, 1920;

Report of the Brimstone in re, Recovery and Payment of Excess Railway Operating Income for Year Ended December 31, 1921;

Report of the Brimstone in re, Recovery and Payment of Excess Railway Operating Income for Year Ended December 31, 1922;

Report of the Brimstone in re, Recovery and Payment of Excess Railway Operating Income for Year Ended December 31, 1923;

James T. Kilbreath, Cullen R. Liskow, W. M. Barrow, Attorneys for Plaintiff.

Feby. 3rd, 1927.
Lodged in the Clerk's Office February 5, 1927.

[File endorsement omitted.]

[fol. 442] In United States District Court

Order of Interstate Commerce Commission—Filed November 19, 1926

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of August, A. D. 1921.

No. 12969

Divisions Received by the Brimstone Railroad & Canal Company

The Commission having under consideration the rates on crude and fuel oil, in tank cars, from certain Texas points to Sulphur Mine, La., for application over the Southern Pacific or Kansas City Southern railroad in connection with the Brimstone Railroad & Canal Company, and on shipments of sulphur, in carloads, from Sulphur Mine over the said railroads;

It is ordered, That the Commission upon its own motion enter upon an investigation into and concerning the justness, reasonableness, and equitableness of the divisions received by the Brimstone Railroad & Canal Company out of the joint rates applicable to the transportation of property over said railroads.

It is further ordered, That the Brimstone Railroad & Canal Company, the Southern Pacific Company, and The Kansas City Southern Railway Company be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon such respondents; and that notice of this proceeding be given to the general public by depositing a copy of the order in the office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at such time and place as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[File endorsement omitted.]

(Here follow exhibits marked side folio pages 443, 444, 445, 445a, 446, 446a, 447, 448, 449, 450, 451, 452, and 453)

WEAVER EXHIBIT No. 13. OCTOBER 18, 1921

Statement Showing Divisions Allowed the Brimstone Railway and Canal Company by the Kansas City Southern Railway and as Compared with Divisions Allowed Other Short Lines of Railway by Other Carriers

Rates in Cents per 100 Pounds Except as Otherwise Provided

Commodities	Brimstone Railway & Canal Co., Miles Operated ... 8. P. A. R. System P. S. No. 212-E Effective Interstate, 8/26/20; Intrastate, 10/1/20 Copy attached.	Trinity Valley Southern R. R. Miles Operated ... 6. I. & G. N. Ry. D/S No. 8251-B Effective August 26, 1920. Copy attached.	Gulf & Sabine River R. R. Miles Operated ... 6.9. Authority—U. S. R. R. A. Gentry Waldo's Letter File "A" 2/28/20 copy attached plus Ex Parte 74 increase, Divisions reproduced in P. A. R. Sys. P. S. No. 339-B. Copy attached.	Moscow, Camden & San Augustine Ry. Miles Operated ... 7. So. Pac. Lines D/S No. 460-F Effective August 26, 1920. Copy attached.	Beaver, Meade & Englewood R. R. Miles Operated ... 7. A. T. & S. F. Ry. P. S. No. 3947 Attached with Ex Parte 74. Increase added.	Texas Short Line Ry. Miles Operated ... 10. T. & P. Ry. P. S. No. 701-D with Ex Parte increase added Copy attached.	Care Northern Railway Miles Operated ... 17. So. Pac. Lines D/S No. 601-D Effective August 26, 1920. Copy attached.	Bryan, Brazos & Burleson Ry. Miles Operated ... 27.4. So. Pac. Lines D/S No. 1-B with Ex Parte 74 increase added. Copy attached.	Rio Grande & Eagle Pass Ry. Miles Operated ... 26. I. & G. N. Ry. D/S No. B. A. 8249-D Effective August 26, 1920. Copy attached.	Asherton & Gulf Ry. Miles Operated ... 32. I. & G. N. D/S No. 8249-A with Ex Parte 74 increase added. Copy attached.	Texas State R. R. Miles Operated ... 32.6 So. Pac. Lines D/S No. 759-C Effective August 26, 1920. Copy attached.
Brick	2 7	2 7	4	2 5	5 4	3 5	3 5	3 4	5 3	3 5	3 5
Cement	3 4	4 7	5 4	2 5	8 8	6	5 5	4	6 7	10 8	5 5
Coal	2 7	54 cts. per ton	67½ cts. per ton	(e) 60 (f) 61	(h) 1 05 (i) 87 ST	(h) 61 (i) 40 5T	(e) 53 5 (f) 54	(h) 46 9 (i) 40 5	93 3 Ton	3 5	(n) 54
Fuel Oil	1 4	2 7		3 5			4 5				5 5
Oil, Crude and Fuel	(a) 2	2 7		3 5			4 5				5 5
Logs, Brimstone Jct. and Sulphur Mine to West Lake, La	$5.00 Per Car					Logs 2 5	Logs 2 5				
Lumber	2 7	3 cts. to 6 7	(b)	(g) 3	8 1	4 5	(l)	4	6 7	6 8	3½ to 7½ cts.
Stone	2 7	2 7	1 7				2	2 7	2 7	2 5	2 5
Sulphur, when destined Port Arthur, Sabine or Galveston, Tex., New Orleans, Gretna or Algiers, La., for export or coastwise movement	27¢ per Gross Ton										
Sulphur, when destined points other than shown above	3										
All other carload traffic	4	5 4	6 8	5 5	(j) 8 1	3 8	(e) 6 5 (f) 7	6 8	6 7	6 8	(e) 6 5 (f) 7
Merchandise L. C. L.	13 5	20 2	(c) 20 2 (d) 27	(e) 20 (f) 20 5	(k)	20 5	(m)	27	26 7		(p)

(a) Applies only on shipments originating Reeless, La., to So. Mansfield, La., inclusive.
(b) For service of one mile or less from the Junction $3 38 per car.
Over 1 mile and not more than 3 miles from the junction 4 72 " "
" 3 " " " " 6 " " " " 2 7 cents per 100 lbs.
" 6 " " " " 10 " " " " 3 4 " " " "
(c) To and from Louisiana and Texas points.
(d) To and from all other points than shown in (c).
(e) When originating east of Miss. River and Ill.-Ind. State Line also Texas intrastate covered by Agt. A. C. Fonda's Tariff No. 22 Series.
(f) When originating other points than shown in (e).
(g) When destined interstate points.
(h) Lump Coal.
(i) Slack Coal.
(j) Except sand, stone, gravel, cinders and articles taking same rates.
(k) 1st Class 37 8 cts.; 2nd Class 33 8 cts.; 3rd Class 31 05 cts.; 4th Class 27 cts.
(l) To Texas Ports 4 cts.; other Texas points reached by and routed via So. Pac. 5 5; to Miss. River and east 2 5; beyond Texas and west of Miss. River 3 and 4 cts. per 100 pounds.
(m) When originating (e) above, 1st Class 29 5 2nd Class 25 5; 3rd Class 20; 4th Class 17 5 cts.
" " (f) " " " 29 5; " " 25 5; " " 20 5; " " 17 5 "
(n) From beyond Texas, on Texas Coal 73½ cts. per ton.
(p) When originating (e) above, 1st Class 34 3; 2nd Class 30 5, 3rd Class 26 5; 4th Class 34 cts.
" " (f) " " " 35 ; " " 31 ; " " 27 ; " " 24 5 cts.

Filed Nov. 19, 1925. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana.

[fol. 444]

WEAVERS EXHIBIT No. 14—October 18, 1921

Filed Nov. 19, 1926. W. R. Lee, Clerk, U. S. District Court, Western District of Louisiana

Comparative Statement of Rates Divisions with Lines Shown Below

Commodity	Divisions in cents per 100 lbs. (except as noted)				
	Brimstone RR. & Canal Co.	Gulf and Sabine River RR.	Mansfield RR. & Transportation Co.	Neame, Carson & Southern	Red River and Gulf
	(1)	(2)	(3)	(4)	(5) (6)
Brick	2 7	4	$4.00 per car		5½
Cement	3 4	5 4		5 4	4
Coal	2 7	67½c per ton	40½c per ton		66½c per ton
Fuel Oil	1 4				
(6) Lumber	2 7	3 4	$4.50 per car	3.	3.
Stone	2 7	1 7			2.
All other Carload Traffic	4	6 8	5 4	4.	6½
			except cotton, coal & lumber	except coal, lumber and coal	except brick, fertilizer, cotton & cotton linters, cotton seed, ice, lumber, live stock, oil, sugar, fuel wood, vegetables
Merchandise, Less	13½	20 2 to and from La. and Tex. points 27 all other points	14 except cotton	20 2	20

(1) Par percentage Sheet No. 212 Series
(2) " " " " 339 "
(3) " " " " 84 "
(4) " " " " 443 "
(5) " " " " 205 " T & P No. 707 Series.
(6) Divisions all for a haul of 8 miles or less.

WFH 10/10/21

FALLON EXHIBIT NO. 20

This Index will be re-issued on or before April 25, 1922, and supplements will be issued each month in which change is made.

I. C. C. No. 24
(Cancels I. C. C. No. 23)

BRIMSTONE RAILROAD & CANAL COMPANY

FREIGHT TARIFF INDEX No. 13

(Cancels Freight Tariff Index No. 12)

U. S. DISTRICT COURT
FILED
NOV 19 1926
W. P. Lee, Clerk
Western District of Louisiana

I. C. C. NO 12969
RESPONDENT'S EXHIBIT NO

INDEX

—TO—

Freight Tariffs, Circulars, Classifications, Classification Exceptions

AS PUBLISHED BY OR IN EFFECT

—VIA—

BRIMSTONE RAILROAD & CANAL COMPANY

ALPHABETICAL LIST OF BRIMSTONE RAILROAD & CANAL COMPANY STATIONS.

Complete public files of this Company's tariffs, classifications and circulars are on file at office of Agent at Sulphur Mine, La

Index No.	STATION	Index No.	STATION	Index No.	STATION
5	*‖Brimstone Jct.....La.	15	*‖Lockport Jct.....La.	10	Sulphur Mine.....La.

*No Agent. Freight must be prepaid.
‖Carload freight only handled.

This Index contains Lists of Tariff Publications in effect April 25, 1921, or which have been filed to become effective at a later date as shown within.

ISSUED APRIL 25, 1921.

Issued by
J. R. GORDON,
Traffic Manager,
NEW YORK, N. Y.

(100)

(Con. P. Curran Printing Co., St. Louis))

EXPLANATION OF RAILWAY AND TECHNICAL ABBREVIATIONS AND REFERENCE MARKS.

ABBREVIATIONS	EXPLANATION	ABBREVIATIONS	EXPLANATION
Ala	Alabama.	Miss	Mississippi.
Ariz	Arizona.	Mo	Missouri.
Ark	Arkansas.	Mo. Pac	Missouri Pacific R. R.
A. T. & S. F	Atchison, Topeka & Santa Fe Ry.	Mont	Montana.
B. & L. E	Bessemer & Lake Erie R. R.	M. L. & T	Morgan's Louisiana & Texas R. R. & Steamship Co.
B. R. R. & C. Co	Brimstone Railroad & Canal Co.	Neb	Nebraska.
B. C	British Columbia.	Nev	Nevada.
Cal	California.	N. M	New Mexico.
C. M. & St. P	Chicago, Milwaukee & St. Paul Ry.	N. O. T. & M	New Orleans, Texas & Mexico Ry.
Colo	Colorado.	Okla	Oklahoma.
Colo. Mid	Colorado Midland Ry.	Ore	Oregon.
Co	Company.	P. & L. E	Pittsburgh & Lake Erie R. R.
D. & R. G	Denver & Rio Grande R. R.	R. R	Railroad.
Fla	Florida.	Ry	Railway.
Ga	Georgia.	Tenn	Tennessee.
H. & S	Houston & Shreveport R. R.	Tex	Texas.
Ida	Idaho.	Wash	Washington.
Ill	Illinois.	Wyo	Wyoming.
I. C	Illinois Central R. R.	(1)	Effective April 27, 1921.
Ind	Indiana.	(2)	Effective April 26, 1921.
I. C. C	Interstate Commerce Commission.	(3)	Effective April 30, 1921.
Kan	Kansas.	(4)	Effective May 20, 1921.
K. C. S	Kansas City Southern Ry.	(5)	Effective May 15, 1921.
Ky	Kentucky.	(6)	Effective May 11, 1921.
La	Louisiana.	(7)	Applicable on Intrastate Traffic.
L. & N	Louisville & Nashville R. R.	*	Expires April 23, 1921.
Mich	Michigan.		
M. V	Midland Valley R. R.		

SECTION ONE.
LIST OF FREIGHT TARIFFS IN WHICH THE BRIMSTONE RAILROAD & CANAL COMPANY IS AN INITIAL CARRIER; ALSO MISCELLANEOUS SCHEDULES.

I. C. C. No.	ISSUED BY		APPLYING ON	FROM POINTS ON THE BRIMSTONE RAILROAD & CANAL COMPANY TO
	Road or Agent	Issuing No.		
1290	Leland, F. A	90-C	Cement	Ark., La., Miss., Mo., Okla., Tex.
1356	Leland, F. A	74-D	Fruits and Vegetables	Ala., Ark., Conn., Dela., Ill., Ind., Iowa, etc.
1398	Leland, F. A	25-C	Grain and Products, Hay, Seeds, Straw	Texas Points.
1370	Leland, F. A	76-D	Live Stock	Ark., La., N. Mex., Okla., Tex. and Kan.
1379	Leland, F. A	29-X	Live Stock	Ark., Colo., Ill., Iowa, Kan., La., Miss., etc.
1197	G. H. & S. A	75-D	Lumber	Louisiana.
3766-B	M. L. & T	1110-B	Lumber, Shingles	Ala., Ga., Ky., Miss., N. C. and Tenn.
1349	Leland, F. A	77-C	Lumber	Ill., Ind., Ia., Mich., Minn., Mo., N. D., S. D. and Wis.
3782-B	M. L. & T	824-G	Lumber	Shreveport, La.
(7)3596-B	M. L. & T	2251-C	Lumber	M. L. & T. R. R. and connections.
1156	G. H. & S. A	176-J	Lumber	Ala., Ark., Conn., Del., D. C., Ill., Ind., Ky., Mo., Md., etc.
1401	Leland, F. A	97-B	Manure	Between Ark., Okla. and Texas on interstate traffic; also between points in Okla. and Tenn., La. and Miss.
1425	Leland, F. A	75-C	Rice and Products	Ark. and Tex. Points.
3374-B	M. L. & T	1190-B	Sulphur	Louisiana points.
3416-B	M. L. & T	1395	Sulphur Crude	Lake Charles, La.
3771-B	M. L. & T	890-I	Sulphur and Brimstone	Ala., Alberta, Ark., Colo., Conn., D. C., Fla., Ga., Ill., Ind., Iowa, Kan., Ky., La., Me., Manitoba, Md., Mass., Mich., Minn., Mo., Miss., Neb., N. B., N. H., N. J., N. Y., N. C., N. S., Ohio, Pa., Que. and Ont.
4026	K. C. S	254-J	Sulphur and Brimstone	Ala., Ark., Colo., Ga., Ill., Ind., Iowa, Kan., Ky., La., Mich., etc.
22	B. R. R. & C. Co	5-D	Commodities	Between B. R. R. & C. Co. Stations.
1428	Leland, F. A	105-B	Commodities	Between New Orleans, Baton Rouge, North Baton Rouge, La., Natchez and Vicksburg, Miss., and points in La. west of the Miss. River; also between points in La. west of the Miss. River.
8321	A. T. & S. F	5563-K	Commodities	Kansas Points on A. T. & S. F. Ry.
1343	Leland, F. A	60-C	Commodities	N. M., Okla. and Tex.
(7)2826	N. O. & N. E	1282-A	Commodities	N. O. & N. E. Stations.
A-388	N. O. T. & M	815-D	Commodities	N. O. T. & M. R. R. Points.
2717	T. & P	23-E	Commodities	T. & P. R. R. Stations in Louisiana.
(7)3812-B	M. L. & T	880-G	Commodities	Between Baton Rouge, North Baton Rouge and New Orleans, La., and Sulphur Mine, La., via Brimstone, La.
1085	Countiss, R. H	4-P	Classes and Commodities	B. C., Ida., Mont., Ore., Utah, Wash., and Wyo.
1077	Countiss, R. H	1-S	Classes and Commodities	Ariz., Cal., Nev., N. M., Ore. and Utah.
(1)1086		1-T		

445-A

Supplement No. 2
(Cancels Supplement No. 1)
Supplement No. 2 contains all changes from the original Index that are effective on the date hereof

BRIMSTONE RAILROAD & CANAL COMPANY

SUPPLEMENT No. 2.

TO

FREIGHT TARIFF INDEX No. 13

INDEX

TO

Freight Tariffs, Circulars, Classifications, Classification Exceptions

AS PUBLISHED BY OR IN EFFECT

VIA

BRIMSTONE RAILROAD & CANAL COMPANY

This Supplement contains corrections to and as in effect on September 12, 1921, or which have been filed to become effective at a later date as shown within.

Complete public files of this Company's Tariffs, Classifications and Circulars are on file at office of Agent, at Sulphur Mine, La.

ISSUED SEPTEMBER 12, 1921.

Issued by
J. R. GORDON,
Traffic Manager,
NEW YORK, N. Y.

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(Con. P. Curran Printing Co., St. Louis)

SECTION ONE.

LIST OF FREIGHT TARIFFS IN WHICH THE BRIMSTONE RAILROAD & CANAL COMPANY IS AN INITIAL CARRIER; ALSO MISCELLANEOUS SCHEDULES.

I. C. C. No.	Cancels I. C. C. No.	ISSUED BY: Road or Agent	ISSUED BY: Issuing No.	APPLYING ON	FROM Points on The Brimstone Railroad & Canal Co. — TO
4014B		M. L. & T.	145C	Coal	New Orleans, La.
(2)1463		Leland F. A.	63-0	Lumber	Texas and Okla.
4031	4026	K. C. S.	254-K	Sulphur and Brimstone	Ala., Ark., Colo., Ga., Ill., Ind., Iowa, Kans., Ky., La., Mich., etc.
1454	1364	Leland F. A.	38-K	Classes and Commodities	Interstate Defined Territories as shown in F. A. Lelands I. C. C. No. 1412.
1453	1371	Leland F. A.	28-L	Classes and Commodities	Between Texarkana Ark. Tex. and New Orleans, La., Vicksburg, Miss., and Ala., Fla., La., Miss.

MISCELLANEOUS SCHEDULES.

I. C. C. No.	Cancels I. C. C. No.	ISSUED BY: Road or Agent	ISSUED BY: Issuing No.	DESCRIPTION OR APPLICATION
1094	1083	Countiss R. H.	61-D	Arbitraries on Classes and Commodities.
(2)1471	1380	Leland F. A.	3-M	Classification Exceptions and Rules between Oklahoma and Interstate points.
1464	1427	Leland F. A.	26	List of Open and Prepay Stations.
RER104	RER103			
RER105	RER104			
RER106	RER105	Conard G. P.		Railway Equipment Register.
RER107	RER106			
RER108	RER107			
4096	4027	K. C. S.	204-G	Rules governing stopping in transit of Sulphur and Brimstone at Texarkana, Ark.—Tex.

SECTION TWO.

LIST OF FREIGHT TARIFFS IN WHICH THE BRIMSTONE RAILROAD & CANAL COMPANY IS A DELIVERING CARRIER.

I. C. C. No.	Cancels I. C. C. No.	ISSUED BY: Road or Agent	ISSUED BY: Issuing No.	APPLYING ON	TO Points on The Brimstone Railroad & Canal Co. — FROM
(3)1469	1329	Leland F. A.	12-U	Cottonseed and Products	Texas.
1459	1372	Leland F. A.	89-D	Fruits Tropical	Texas.
1458	1350	Leland F. A.	47-J	Grain and Products	Interstate points.
1452	1338	Leland F. A.	79-D	Petroleum and Products	Okla., and Ft. Smith, Ark.
(2)1465		Leland F. A.	6-A	Classes and Commodities	La., and Miss.
	3149B	M. L. & T.	145-B	Coal	Eliminate from Index.
4082B		M. L. & T.	1405-A	Sulphur and Brimstone	Sulphur Springs, La.
137	122	Sedgman W. J.	1-E	Classes and Commodities	New York and Altantic Seaboard Territory.

(2)Effective September 15, 1921.
(3)Effective October 10, 1921.
(4)Effective September 28, 1921.

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SECTION ONE Concluded.

LIST OF FREIGHT TARIFFS IN WHICH THE BRIMSTONE RAILROAD & CANAL COMPANY IS AN INITIAL CARRIER, ALSO MISCELLANEOUS SCHEDULES.

I. C. C. No.	ISSUED BY		APPLYING ON	TO POINTS ON THE BRIMSTONE RAILROAD & CANAL COMPANY
	Road or Agent	Issuing No.		FROM
A-1122	Boyd, R. B.	122-B	Classes and Commodities	Colorado.
1420	Leland, F. A.	21-Q	Classes and Commodities	Houston, Galveston, Tex., and points taking same rates.
1086	Countiss, R. H.	14-F	Classes and Commodities	Idaho, Mont., Utah, Wyo.
1364	Leland, F. A.	38-J	Classes and Commodities	Interstate Defined Territories as shown in F. A. Leland's I. C. C. No. 1412
(C) C-10677	C. R. I. & P.	28251-A	Classes and Commodities	Between stations in Louisiana.
A-4846	Mo. Pac.	2496-E	Classes and Commodities	Mo. Pac. R. R. Stations.
1	Miss. Warrior River Section	6	Classes and Commodities	New Orleans, La.
1433	Leland, F. A.	59-J	Classes and Commodities	Oklahoma Points.
1371	Leland, F. A.	28-K	Classes and Commodities	Texarkana, Ark.-Tex., and rate points.
1332	Leland, F. A.	8-D	Classes and Commodities	Texas Points.
1307	Leland, F. A.	95-B	Classes and Commodities	Texas Points.
A-1034	Boyd, R. B.	124-A	Classes and Commodities	Utah Common Points.
1287	Leland, F. A.	49-C	Classes	La. and Miss.

MISCELLANEOUS SCHEDULES.

I. C. C. No.	ISSUED BY		DESCRIPTION OR APPLICATION
	Road or Agent	Issuing No.	
(O)13	B. R. R. & C. Co.		Allowances made to Owners for use of Private Cars.
1082	Countiss, R. H.	59-D	Arbitraries on Classes and Commodities.
1083	Countiss, R. H.	61-C	Arbitraries on Classes and Commodities to make Through Rates East and West Bound.
500	Speiden, F. L.	75-A	Basis for Commodity Rates on Commodities where specific Commodity Rates are not published.
658	B. & L. E.		Bases for Eastbound Rates.
A-3	Miller, J. C.		Bases for Rates and Billing Instructions—Eastbound.
11	Crow, W. R.	21	Bases for Rates, Eastbound.
1415	P. & L. E.	1	Rate Bases and Billing Instructions—Eastbound.
(O)G-A 207	Can. Pac. Desp.	W-6	Eastbound Rate Bases and Billing Instructions.
(O)E-1708	Can. Pac.	E-2440	Eastbound Rate Bases and Billing Instructions.
A-1135	Boyd, E. B.	6-Q	Capacities of Tank Cars.
(O)C 46	Smith, F. W.	46	Classification, Official.
9	Crosland, J. E.	45	Classification, Southern.
15	Fyfe, R. C.	57	Classification, Western.
1316	Leland, F. A.	2-R	Classification Exceptions and Rules, between Arkansas Points and Interstate Points.
(O)1446		2-S	
1426	Leland, F. A.	1-J	Classification Exceptions and Rules, between Louisiana and Texas Points and Interstate Points.
1380	Leland, F. A.	3-L	Classification Exceptions and Rules, between Oklahoma Points and Interstate Points.
4	Crosland, J. E.	1	Exceptions to Southern Classification.
24	B. R. R. & C. Co.	13	List of Freight Tariffs, Circulars, Classifications and Exceptions.
1427	Leland, F. A.	25	List of Open and Prepay Stations.
11	Fairbanks, J. E.	7-A	Mileage Rules Governing the Payment of Mileage and Equalization Mileage on Freight Cars.
1288	Leland, F. A.	2-A	Mileage Table.
8	Fairbanks, J. E.	4-A	National Car Demurrage Rules and Charges.
R.E.R.103	Conard, G. P.		Railway Equipment Register.
6	Fairbanks, J. E.	1	Rates, Rules and Regulations Governing Handling of Perishable Freight.
1369	Leland, F. A.	1-B	Rules and conditions governing the transportation of Live Stock.
1386	Leland, F. A.	61-D	Rules and Regulations Governing Drying in Transit of Sweet Potatoes, etc., at Points in Ark. and La.
4027	K. C. S.	204-F	Rules Governing Stopping in Transit of Sulphur and Brimstone at Texarkana, Ark.-Tex.
476	Speiden, F. L.	100-B	Rules governing rates on Live Stock.
3896-B	M. L. & T.	1394-E	Stoppage in transit of Sulphur and Brimstone Rates, Rules and Regulations.
3528-B	M. L. & T.	1498-A	Station List and Distance Table.
9	Fairbanks, J. E.	1-B	Storage Rules and Charges.
1412	Leland, F. A.	1-F	Territorial Directory.

SECTION TWO.
LIST OF FREIGHT TARIFFS IN WHICH THE BRIMSTONE RAILROAD & CANAL COMPANY IS A DELIVERING CARRIER.

I. C. C. No.	ISSUED BY		APPLYING ON	TO POINTS ON THE BRIMSTONE RAILROAD & CANAL COMPANY
	Road or Agent	Issuing No.		FROM
A-1021	Boyd, E. B.	110-A	Potatoes and Vegetables	Colo., Neb., N. M. and Wyo.
A-1013	Boyd, E. B.	113-A	Potatoes and Vegetables	Utah.
A-1163	Boyd, E. B.	124-B	Classes and Commodities	Utah Common Points.
A-1112	Boyd, E. B.	122-B	Classes and Commodities	Colorado.
1064	Countiss, R. H.	27-D	Lumber	Cal., Nev., Ore. and Utah Points.
1087	Countiss, R. H.	3-O	Classes and Commodities	Ariz., Cal., Nev., N. M., Ore. and Utah Points.
1084	Countiss, R. H.	2-P	Classes and Commodities	B. C., Idaho, Mont., Ore. and Wash.
1086	Countiss, R. H.	14-P	Classes and Commodities	Idaho, Mont., Utah, Wyo.
2803	D. & R. G.	4039-B	Canned Goods; Potatoes and Vegetables; Sugar, Syrup and Honey	Colorado and New Mexico Points.
1197	G. H. & S. A.	75-D	Lumber	Louisiana and Texas
1214	H. & S.	523-D	Classes and Commodities	Shreveport and H. & S. R. R. Points.
E-1539	I. C.	3010	Coal	Ala., Ark., Ill., Ind., Ky., La., Miss. and Tenn.
6025	K. C. S.	1857-V	Oil, Petroleum, and Products	Oklahoma Points on M. V. R. R.
1290	Leland, F. A.	90-C	Cement	Illinois, Indiana, Kansas, Kentucky, Missouri, Ohio, Oklahoma, Tennessee, Texas and Wisconsin.
1324	Leland, F. A.	3-C	Cement Plaster	Acme and Plasterco, Tex.
1442	Leland, F. A.	19-I	Coal, Coal Briquette and Coke	Arkansas and Oklahoma Mines.
1314	Leland, F. A.	11-N	Cotton Fabrics	Texas Points.
1329	Leland, F. A.	12-T	Cotton Seed and Products	Texas Points.
1269	Leland, F. A.	13-V	Fruits and Vegetables	Texas Points.
1372	Leland, F. A.	89-C	Fruits, Tropical	Texas Points.
1390	Leland, F. A.	57-C	Glass and Glassware	Ark., La., Okla. and Tex.
1350	Leland, F. A.	47-H	Grain and Products, Hay, Seeds, Straw	Interstate Points.
1399	Leland, F. A.	23-S	Grain and Products, Hay, Seeds, Straw	Texas Points.
1396	Leland, F. A.	16-S	Hides, Skins, Pelts, Wool, Mohair, Cattle Tails, Switches and Inedible Tallow	Okla. and Tex. and points in S. W. L. T. D. No. 1-E, F. A. Leland's I. C. C. No. 1412.
1370	Leland, F. A.	76-D	Live Stock	Ark., La., N. Mex., Okla., Tex. and Kan.
1379	Leland, F. A.	29-X	Live Stock	Interstate Points.
1361	Leland, F. A.	7-Y	Live Stock	Texas Points.
1374	Leland, F. A.	37-J	Molasses, Rice and Sugar	Arkansas and Texas Points.
1429	Leland, F. A.	35-M	Oil, Petroleum and Products	Ark., La. and Tex.
1416	Leland, F. A.	33-S	Packing House Products, Fresh Meats and Fertilizers	Ark., Ill., Iowa, Kan., Minn., Mo., Neb., Okla., Tenn., Tex. and Wis.
1338	Leland, F. A.	79-C	Petroleum and Products	Okla. and Ft. Smith, Ark.
1425	Leland, F. A.	75-B	Rice and Products	Arkansas and Texas Points.
1394	Leland, F. A.	102-B	Sulphur and Brimstone	Texas.
(c)1449		102-C		
1335	Leland, F. A.	96	Classes and Commodities	Defined Territories South of Ohio River and East of Miss. River.
1397	Leland, F. A.	93-B	Classes and Commodities	El Paso, Tex., Group.
1420	Leland, F. A.	21-Q	Classes and Commodities	Houston and Galveston, Tex., and points taking same rates.
1432	Leland, F. A.	58-M	Classes and Commodities	Interstate Points.
1433	Leland, F. A.	59-J	Classes and Commodities	Oklahoma Points.
1423	Leland, F. A.	8-D	Classes and Commodities	Texas Points.
1424	Leland, F. A.	20-E	Classes and Commodities	Texas Points.
1287	Leland, F. A.	49-C	Classes	La. and Miss.
A-14161	L. & N.	G.F.O-3023	Coal	Alabama.
A-4711	Mo. Pac.	4263-G	Cocoanut Cake and Meal	Alexandria and Lake Charles, La.
A-4846	Mo. Pac.	2496-E	Classes and Commodities	Stations on Mo. Pac. R. R. and connections.
3069-B	M. L. & T.	2384-C	Cocoanut Meal, etc.	Rayne, La.
3149-B	M. L. & T.	145-B	Coal	New Orleans, La.
3596-B	M. L. & T.	2251-C	Lumber	M. L. & T. R. R. and connections.
3815-B	M. L. & T.	56-C	Commodities	Lake Charles and West Lake, La.
3812-B	M. L. & T.	880-G	Commodities	Baton Rouge, North Baton Rouge and New Orleans, La.
3901-B	M. L. & T.	58-D	Classes and Commodities	Crowley, La.
3893-B	M. L. & T.	1203-G	Commodities	New Orleans, La.
2826	N. O. & N. E.	1282-A	Commodities	N. O. & N. E. Stations.
A-388	N. O. T. & M.	815-E	Commodities	Louisiana Points on N. O. T. & M. Ry.
7174	St. L.-S. F.	3150-B	Coal and Coke	Alabama and Memphis, Tenn.
(c)7816		3150-C		
122	Sedgman, Wm. J.	1-D	Classes and Commodities	New York and Atlantic Seaboard Territory.
284	Speiden, F. L.	18-A	Pig Iron	Southern Producing Points.
(c)448		18-B		
3081	Un. Pac.	3056-C	Hay and Straw	Colo., Kan. and Neb.

SECTION THREE.
LIST OF I. C. C. NUMBERS FILED BY THE BRIMSTONE RAILROAD & CANAL COMPANY WITH THE INTERSTATE COMMERCE COMMISSION.

I. C. C. No.	B. R. R. & C. Co. No.	I. C. C. No.	B. R. R. & C. Co. No.	I. C. C. No.	B. R. R. & C. Co. No.
(c)13	Allowance on Private Cars.	22	Local Freight Tariff No. 5-D.	24	Freight Tariff Index No. 13.

FALLON EXHIBIT NO.21

No Supplement to this Tariff will be issued, except for the purpose of cancelling the tariff.

I. C. C. No. 22
(Cancels I. C. C. Nos. 20 and 21.)

BRIMSTONE RAILROAD AND CANAL COMPANY

U. S. DISTRICT COURT
E. D.
NOV 19 1926
W. S. LEE, Clerk
Western District of Louisiana

I. C. C. NO. 12969
RESPONDENT'S EXHIBIT NO.

LOCAL AND PROPORTIONAL FREIGHT TARIFF No. 5-D

(Cancels Tariffs Nos. 5-B and 5-C)

APPLYING ON

COMMODITIES

BETWEEN STATIONS ON

BRIMSTONE RAILROAD AND CANAL COMPANY

Governed, except as otherwise provided herein, by the Western Classification No. 56 (see Note), R. C. Fyfe's I. C. C. No. 14, supplements thereto and re-issues thereof, and by Exceptions to said Classification Southwestern Lines' Classification Exceptions and Rules Circular No. 1-J, F. A. Leland's I. C. C. No. 1426, supplements thereto and re-issues thereof.

Note—Western Classification No. 56 and Supplements Nos. 1, 2 and 3 thereto will apply on Louisiana State Traffic, pending cancellations thereof on such traffic.
(R. R. Commission of La. Order No. 2196 and authority 10922-R and Amendment No. 1 thereto.)

ISSUED FEBRUARY 7, 1921 **EFFECTIVE MARCH 15, 1921**

Issued under Special Permission of the Interstate Commerce Commission No. 51537, dated January 11, 1921.

Issued in compliance with Authority No. 11091-R, of the Railroad Commission of Louisiana of October 21, 1920, and based on order of the Interstate Commerce Commission of August 12, 1920, and Supplemental Orders of November 6 and December 18, 1920, in Docket No. 8845.

Issued by
J. R. GORDON,
Traffic Manager,
NEW YORK, N. Y.

T. F. No. 22, Folio No. 17

(100)

(Con. P. Curran Printing Co., St. Louis.)

♦CANCELLATION OF RATES NOT BROUGHT FORWARD IN THIS ISSUE.

Rates on Coal, Grain, Hay, Oil (Crude or Fuel), formerly published in Tariff 5-B, I. C. C. No. 20 are hereby canceled. Rates published in Agent F. A. Leland's Tariff No. 105-B, I. C. C. No. 1428 will apply hereafter.

MINIMUM CHARGE ON INTERSTATE TRAFFIC.

Minimum charge shall be as per current Western Classification (see Title Page).

COMMODITY RATES.

Applicable on Interstate and Intrastate Traffic (except as noted).

The following list enumerates only such articles as are given specific rates. Articles not specified will take class rates, (except as otherwise provided in Agent F. A. Leland's Tariff No. 106-B, I. C. C. No. 1428.)

Item No.	COMMODITIES (In Carloads)	BETWEEN (Except as Noted)	AND (Except as Noted)	RATE In Cents per 100 Pounds (Except as Noted)
5	Grain and Hay, mixed carloads	Brimstone Jct. La. Sulphur Mine La.	Lockport Jct. La. Sulphur Mine La. Lockport Jct. La.	6 5½ 5½
10	Lumber and Lath, minimum weight 30,000 pounds	Brimstone Jct. La. Sulphur Mine La.	Lockport Jct. La. Sulphur Mine La. Lockport Jct. La.	4 3½ 3½
15	Lumber, Piling and Ties, minimum weight 30,000 pounds **Note**—Applies only on shipments destined to Interstate points.	FROM Sulphur Mine La.	TO Brimstone Jct. La. Lockport Jct. La.	2½
20	**Intrastate Only.** Road Material, viz.: Brick, Cement, Sand and Washed Gravel, in cents per car (Account Good Roads Movement.) (Authority 9941-R)	FROM Lockport Jct. La.	TO Sulphur Mine La.	①500
25	**Interstate Only.** Rice, Rough, minimum weight 30,000 pounds	Brimstone Jct. La. Sulphur Mine La.	Lockport Jct. La. Sulphur Mine La. Lockport Jct. La.	6 3½ 3½
30	**Intrastate Only.** Rice, Rough, minimum weight 30,000 pounds	Brimstone Jct. La. Sulphur Mine La.	Lockport Jct. La. Sulphur Mine La. Lockport Jct. La.	4½ 2½ 2½
35	**Intrastate Only.** Sawdust, in cents per car (Authority 11000-R)	FROM Lockport Jct. La.	TO Sulphur Mine La.	1000
40	Sulphur and Brimstone, minimum weight 30,000 pounds	Brimstone Jct. La. Sulphur Mine La.	Sulphur Mine La. Lockport Jct. La.	5½ 5½
45	Sulphur and Brimstone, minimum weight 30,000 pounds when for export or coastwise traffic, in cents per ton of 2,240 pounds	Brimstone Jct. La. Sulphur Mine La.	Sulphur Mine La. Lockport Jct. La.	27 27
50	**Intrastate Only** Sand and Shells, in train lots of not less than ten (10) cars. (See Notes 1 and 2) **Note 1**—Dinkey engines for switching cars to the loading dock to be counted as a loaded car when moving in a trainload of sand and shells. **Note 2**—Return movement of empty cars to be free. (Authority 10916-R)	FROM Lockmoor Junction La.	TO Sulphur Mine La.	②$9.00 ①6.50 per loaded car.

♦Advance.
①Applies only when commodities are to be used in the construction of good roads, streets or public work.
②Applies on all movements except as provided in ①.

[fol. 451]

FALLON EXHIBIT No. 23

I. C. C., No. 12969; Respondent's Exhibit No. 23

Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

Statement of Divisions Allowed Certain Short Line Railroads in the State of Louisiana

Commodity	Neame, Carson & Southern R.R. (1)	Gulf & Sabine River R.R. (2)	Red River & Gulf R. R. (3)	Woodworth & Louisiana Central R. R. (4)	Glenmora & Western R. R. (5)	Louisiana & Pacific Ry. (6)	Franklin & Abbeville Ry. (7)	B. R. R. & C. Co (8)
Cement	3.4¢	5½¢		4.0¢	Rates pro-	All divisions	9½¢	3.4¢
Brick		4	5.4 to 6.1 (d)	2.7	rated with	with this line	4	2.7
Coal	40½¢ per ton	67½¢ per ton	67½¢ (d) to 94.5 per ton	81¢ per ton	this line in the handling of most its thru traffic on the basis of 20% of the St. Louis rate.	are on a per-centage basis. On New Orleans traffic 25% of thru rates. On traffic from Defined Territories 20% of the St. Louis rate remainder east of Lake Charles.	35¢ to $1.35 per ton	2.7
Fuel Oil							3 to 6¢	1.3-2.0
Stone		1½ (a)		2.0 (a)			2½ (a)	2.7
Grain and Grain Products	4.1	9½	6.8 to 9½ (d)	6.8			7½	4.0
All other carload traffic, except Lumber	4.1	7	6.8 to 10.3 (d)	6.8	8.4		6 to 7¢	4.0
Merchandise, L.C.L.	20	20½ (b) to 27 (c)	20.2 (d) to 47.3	27	25.3		....	13½

NOTE: a—Division also applies on sand and gravel.
b—Division 20½¢ applies on Louisiana and Texas carload traffic.
c—Division 27¢ applies on all other points.
d—Indicates minimum and maximum divisions allowed.

Authority for Divisions:

(1) Morgan's Louisiana & Texas RR & SS Co. Division Sheet No. 2804-A, date effective Aug. 26, 1920.
(2) " " " " " " " " " 2807-C, " " " 26, 1920.
(3) " " " " " " " " " 2806-A, " " " 26, 1920.
(4) " " " " " " " " " 2802-B, " " " 26, 1920.
(5) " " " " " " " " " 2887-A, " " " 26, 1920.
(6) " " " " " " " Percentage Basis 398-P, " " May 14, 1919.
(7) " " " " " " " Division Sheet No. 2884-D, " " Aug. 1, 1919.
(8) " " " " " " " " " 2899-A, " " Aug. 26, 1920.

Mileage	Miles
Neame Carson & Southern RR	27.67
Gulf & Sabine River RR	16.48
Red River & Gulf RR	77
Woodworth & Louisiana Central RR	6.3
Glenmora & Western Ry	23.3
Louisiana & Pacific Ry	72.0
Franklin & Abbeville Ry	55.0
Brimstone RR. & Canal Co	10.25

[fol. 432]

EXHIBIT IN EVIDENCE

Comparison of the Divisions Received by Brimstone Railroad and Canal Company Prior to April 1, 1919, Effective April 1, 1919; Also Effective August 26, 1920

Commodity	Traffic originating on BRR & CCo. destined to:	Traffic destined to BRR & CCo. originating at:	Division sheet issued by:	Authority for divisions prior to April 1, 1919	Divisions allowed, quoted in cents per 100 lbs., except as noted					
					Prior to April 1, 1919		Effective on April 1, 1919		Effective on and after August 26, 1920	
					Minimum	Maximum	Authority	Division	Authority	Division
Sulphur, carloads, all rail shipments			Kan. City Sou. Ry.	P. S. #454-A D. S. 7-A	1 3¢	3 8¢	P. S. 212-D	2¼¢	P. S. 212-E	3¢
			Sou. Pac. Ry.	D. S. 2868-A	1 25¢	6 29¢	D. S. 2897	2¼¢	D. S. 2897-A	3¢
Sulphur, carloads, when for coastwise and export movement	Galveston and Port Arthur, Tex. Gretna & New Orleans Galveston Sabine Texas City & W. Port Arthur.		Kan. City Sou. Ry. Sou. Pac. Ry. Sou. Pac. Ry.	P. S. 454-A D. S. 1780-H D. S. 2126-L	18 8 per 2240 lbs. 19 18 9	 20¢	P. S. 212-D D. S. 2897 D. S. 2897	20¢ per 2240 lbs. 20¢ " " 20¢ " "	P. S. 212-E D. S. 2897-A D. S. 2897-A	27¢ per 2240 lbs. 27¢ " " 27¢ " "
Brick, carloads		Lake Charles, La.	Kan. City Sou. Ry. Sou. Pac. Ry.	D. S. 4-A	1 7¢		P. S. 212-D D. S. 2899	2¢ 2¢	P. S. 212-E D. S. 2899-A	2 7¢ 2 7¢
Cement, carloads		Acme, Texas Hartshorne, Okla.	Kan. City Sou. Ry. Kan. City Sou. Ry. Sou. Pac. Ry.	D. S. 2-B D. S. 21-A	3 2¢ 4 3¢		P. S. 212-D D. S. 2899	2½¢ 2½¢	P. S. 212-E D. S. 2899-A	3 4¢ 3 4¢
Coal, carloads			Kan. City Sou. Ry. Sou. Pac. Ry.	D. S. 13-C	60.45 per ton 2000 lbs.		P. S. 212-D D. S. 2899	2¢ 2¢	P. S. 212-E D. S. 2899-A	2 7¢ 2 7¢
Oil, crude and fuel, carloads		Mid-Valley R. R. Group #1 points Stations on T&PS Ry. Lake Charles Chaseum, Beaumont, Sabine, Sour Lake, Gladys, Texas	Kan. City Sou. Ry. Kan. City Sou. Ry. Kan. City Sou. Ry. Kan. City Sou. Ry. Sou. Pac. Ry.	D. S. 2-B D. S. 9-B D. S. 39-A P. S. 212-C D. S. 1825-B	1 3¢ 1 6¢ 2 4¢ 50% of rate 1¢		P. S. 212-D D. S. 2899	1¢ 1¢	P. S. 212-E (T&PtS Ry. Stations Supp. # 1 to P. S. 212-E 5/1/21) D. S. 2899-A	1 4¢ 2¢ 1 3¢
Logs, carloads		West Lake, La. West Lake, La.	Kan. City Sou. Ry. Sou. Pac. Ry.	D. S. 4-A	$3.75 per car		P. S. 212-D D. S. 2898	$3.75 per car $3.75 per car	P. S. 212-E D. S. 2898-A	$5.00 per car $5.06 per car
Lumber, carloads, lumber & shingles, C. L.	M. L. A. T. & L. W. Sta. Mooring, La.		Kan. City Sou. Ry. Sou. Pac. Ry. Sou. Pac. Ry.	P. S. 1-C D. S. 1797-D D. S. 2630-A	2 5¢ 1 7 8¢ 1 87¢		P. S. 212-D D. S. 2898	2¢ 2¢	P. S. 212-E D. S. 2898-A	2 7¢ 2 7¢
Sawdust, carloads		Lake Charles West Lake Powel Lumber Co. Mill	Sou. Pac. Ry. Sou. Pac. Ry.	D. S. 1797-D D. S. 2893	$1.90 per car $6.25 per car		D. S. 2898	$6.25 per car	D. S. 2898-A	$8.44 per car
Rice, straw, carloads			Kan. City Sou. Ry. Sou. Pac. Ry.	D. S. 1-A D. S. 1797-D	1 3¢ 3 1¢	 3 2¢	P. S. 212-D	3¢	P. S. 212-E	4¢
Rice, rough, carloads	Beaumont, Tex.	Lake Charles, La.	Kan. City Sou. Ry. Kan. City Sou. Ry. Kan. City Sou. Ry.	D. S. 1-B D. S. 2-A P. S. 212-C	2 5¢ 2 5¢ 2 4¢		P. S. 212-D	3¢	P. S. 212-E	4¢
Lime, carloads		Texas points Texas points	Kan. City Sou. Ry. Sou. Pac. Ry.	P. S. 212-C D. S. 1797-D	2 7¢ 2 2 3¢		P. S. 212-D	3¢	P. S. 212-E	4¢
Shells, carloads		Beaumont	Kan. City Sou. Ry.	P. S. 212-C	18.81 per net ton					

	Kan. City Sou. Ry.	P. S.	212-C	2 7¢		P. S.	212-D	3¢	P. S. 212-E	4¢
	Sou. Pac. Ry.	D. S.	1797-D	2 2/3¢						
	Kan. City Sou. Ry.	P. S.	212-C	18.83 per net ton						
	Kan. City Sou. Ry.	P. S.	212-C	3 3¢	3 7¢	P. S.	212-D	3¢	P. S. 212-E	4¢
s	Kan. City Sou. Ry.	P. S.	212-C	Regular percent	3 7					
	Sou. Pac. Ry.	D. S.	1797-D	3 1¢	4 4					
	Kan. City Sou. Ry.					P. S.	212-D	2¢	P. S. 212-E	2 7¢
	Sou. Pac. Ry.					D. S.	2899	2¢	D. S. 2899-A	2 7¢
ıkee	Kan. City Sou. Ry.	P. S.	212-C	16⅔ of St. Louis rate		P. S.	212-D	3¢	P. S. 212-E	4¢
tory	Sou. Pac. Ry.	D. S.	2225-A	3-1/8¢		D. S.	2899	3¢	D. S. 2899-A	4¢
a, La.	" "	D. S.						On all other carload traffic		
	" "	D. S.	1797-D	3-1/8¢						
	" "	D. S.	1797-D	20% of rate						
Points	" "	D. S.	1797-D	3-1/8¢		D. S.	2899	10¢	D. S. 2899-A	13½¢
	" "	D. S.	1797-D	40% of rate				On all less than carload traffic		
W Sta.	" "	D. S.	1797-D	3-1/8¢						
itory	" "	D. S.	1797-D	5¢						
ans										
B. Terr.	" "	P. S.	545-A	3-1/8¢						
itory	" "	P. S.	648-A	3-1/8¢						
rk.										
	Kan City Sou. Ry.	P. S.	212-C	20%		P. S.	212-D		P. S. 212-E	
	" "	P. S.	212-C	20%				Carloads 3¢		Carloads 4¢
	" "	P. S.	212-C	50%				Less carload 10¢		Less carload 13½¢
	" "	P. S.	212-C	16⅔						
oints	" "	P. S.	212-C	16⅔						
ined	" "	P. S.	212-C	20% (a)						
nts	" "	P. S.	212-C	16⅔ (a)						
ed above	" "	P. S.	212-C	10% (b)						
oard Terr.	" "									

St. Louis after allowing

steamers its proportion.

Western District of Louisiana.]

Lime, carloads	Texas points Texas points
Shells, carloads	Beaumont
Grain, grain products, oats, wheat, seeds, hay & straw, flour, carloads	Texas points Defined Points Texas Points
[fol. 433] Stone, carloads	
Steel tanks, structural steel, mining machinery & steam engines, carloads	Chicago and South Milwaukee
Classes and commodities	Defined Territory via Alexandria, La New Orleans Beaumont Other Texas Points Lake Charles ML & T & LW Sta. Defined Territory via New Orleans Atlantic Sea. B. Ter. Defined Territory via Stamp, Ark.
Miscellaneous, percentage basis on various classes of carload and less than carload traffic.	Kansas City Beaumont Lake Charles St. Louis and Memphis Miss. River Points All other Defined Territory Points except as noted above Atlantic Seaboard Ter

NOTE (a) Shows percentage of revenue accruing to lines south of St. Louis
lines north and east their authorized proportion.

NOTE (b) Shows percentage of revenue to rail lines after allowing steamers

[Endorsed: Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western D

In order to develop the cost of operating services rendered by the Brimstone Railroad & Canal Company to its connections with both the Southern Pacific Company and The Kansas City Southern Railway Company, the tracks of the Brimstone Railroad & Canal Company and such tracks of the Union Company as are necessarily used by the Brimstone Railroad & Canal Company in its common carrier service—were divided into three zones, designated as "Common Zone" "Southern Pacific Zone" and "KCS Zone." These zones embrace the following tracks as per designations on attached map, Exhibit No. —.

"Common Zone"—This zone is comprised of tracks "A" to "C" shown in yellow on attached map, Exhibit No. —, and all tracks lying north of point "A" and west of point "C" shown in blue, green and black on map; also spur tracks "I" to "J," "K" to "L" and "M" to "N" shown in yellow on map and tracks "F" to "G" and "F-1" to "H" shown in yellow and blue on map.

"Southern Pacific Zone"—This zone is comprised of tracks "A" to "D" and "D" shown in broken red lines on attached map, Exhibit No. —; also Southern Pacific Company interchange tracks used jointly with the Brimstone Railroad & Canal Company, shown in brown on map. [fol. 455] "KCS Zone"—This zone is comprised of tracks "C" to "E" shown in solid red line on attached map, Exhibit No. —; also Kansas City Southern Railway interchange track shown in purple on map.

The "Common Zone" embraces those tracks belonging to the Brimstone Railroad & Canal Company and those tracks belonging to the Union Sulphur Company used by the Brimstone Railroad & Canal Company in its common carrier service, over which service is rendered in common for both the Southern Pacific Company and The Kansas City Southern Railway Company.

The "Southern Pacific Zone" is that part of the main line track and part of wye of the Brimstone Railroad & Canal Company and the Southern Pacific Company interchange tracks used exclusively in handling business to and from the Southern Pacific Company.

The "KCS Zone" is that part of the main line track of the Brimstone Railroad & Canal Company and The Kansas City Southern Railway Company interchange track used

exclusively in handling business to and from The Kansas City Southern Railway Company.

A record was kept during the test period of the actual time spent by the engines of the Brimstone Railroad & Canal Company working in each of the three zones. This record was kept by a special clerk who rode the engine during its entire tour of duty each day.

A record was kept during the test period of common carrier service performed by engines belonging to the Union Sulphur Company which service should rightfully have been performed by the Brimstone Railroad & Canal Company and which the Union Sulphur Company could lawfully call upon the Brimstone Company to perform.

A record was kept during the test period of all loaded cars handled into each of the three zones and where a car was handled loaded into a zone, made empty and reloaded it was counted as two separate cars.

The accumulated time of the Brimstone Railroad & Canal Company engines was determined for each of the zones during the test period. The total number of loaded cars handled in each respective zone during the test period was divided into total engine hour time in each respective zone during the test period and the average minutes per car, engine time, was thus secured for each zone.

The movement of each loaded car handled during the test period was traced through the zones through which the car passed, the average time (or minutes per car), determined as heretofore explained, accumulated for each of the zones, thus arriving at the average time consumed in handling each car during the test period.

The operating costs were determined for the test period as per formula hereafter given and reduced to engine hour cost for each zone by dividing the costs allocated to each zone for the test period by the number of engine hours worked in each zone during the test period and the total operating cost per engine hour per zone thus obtained. The operating cost per car handled during the test period was thus determined by applying the engine hour cost per zone to the average minutes per car per zone required to handle the cars during the test period.

[fol. 456] Formula Used in Allocation and Apportionment of Expenses Applicable to Operations of the Brimstone Railroad & Canal Company

The audited accounts for the year 1921 were taken as a basis of operating costs being considered as a more accurate reflection of the normal operating expenses of the Brimstone Railroad and Canal Company than any other available period. A shorter period of time would not reflect the average costs of operation owing to the limited extent of operations. Adjustments considered as proper charges which should be borne by the Brimtsone Railroad & Canal Co., as heretofore mentioned, were included in the operating expenses, as separate items, and the whole then equated to a seven days' period to correspond with the period of the time study.

Inasmuch as the Brimstone Railroad & Canal Company performs only freight service, no division of expenses was necessary as between freight and passenger, all being assigned to freight.

Due to the fact a certain portion of its main line track is used exclusively by the Brimstone Railroad & Canal Co. (Tracks "A" to "D" and "D" on map, Exhibit No. —) in its delivery to the Southern Pacific Company; a certain portion (Track "C" to "E" on map, Exhibit No. —) is used exclusively in its delivery to The Kansas City Southern Ry. Co., and a certain portion (Track "A" to "C"—Yellow Line—on map, Exhibit No. —), is used in common in making deliveries to both the Southern Pacific Company and the Kansas City Southern Ry., it was necessary for proper allocation of costs to engine hour time to separate Maintenance of Way & Structures expenses and Taxes and allocate them to each of the separate zones, namely "Common Zone", "Southern Pacific Zone" and "K. C. S. Zone." Maintenance of Equipment, Traffic, Transportation, and General Expenses were considered as applying in general to all zones and not allocable to any given zone or zones. Following is the formula used:

Maintenance of Way and Structures

201 Superintendence.
202 Roadway Maintenance.
212 Ties.
214 Rails.
216 Other Track Material.
220 Track Laying and Surfacing.
225 Crossing and Signs.
227 Station and Office Buildings.
229 Roadway Machines.
231 Small Tools and Supplies.

Actual expenses for year 1921, and adjustments, equated to test period of seven days, and assigned to each of the zones on mileage basis, allowing a ratio of 2 to 1 of the average cost per mile on tracks "A" to "C" (yellow lines) and "A" to "D and D" (broken red lines) on map.

[fol. 457]

Maintenance of Equipment

301 Superintendence.
308 Steam Locomotives—Repairs.
309 Steam Locomotives—Depreciation.
314 Freight Train Cars—Repairs.
315 Freight Train Cars—Depreciation.
316 Freight Train Cars—Retirements.

Actual expenses for year 1921, and adjustments equated to test period of seven days and assigned first as common to all three zones and allocated to each zone on basis of number of engine hours in each zone during the test period, exclusive of time of Union Sulphur Company engines performing transportation service.

Traffic

351 Superintendence.
354 Traffic Associations.
358 Stationery & Printing.

(Same as Maintenance of Equipment.)

Transportation

371 Superintendence.
373 Station Employees.
374 Weighing, Inspection & Dem. Bureaus.
376 Station Supplies & Expenses.
392 Train Enginemen.
394 Fuel for Train Locomotives.
397 Water for Train Locomotives.
399 Other Supplies for Train Locomotives.
400 Engine House Expenses—Train.
401 Trainmen.
402 Train Supplies & Expenses.
419 Stationery & Printing.
418 Loss & Damage—Freight.

(Same as Maintenance of Equipment.)

General

451 Salaries & Expenses of General Officers.
452 Salaries & Expenses of Clerks and Attendants.
453 General office supplies & expenses.
454 Law Expenses.
455 Insurance.
457 Pensions.
458 Stationery & Printing.
459 Valuation Expenses.
460 Other Expenses.

(Same as Maintenance of Equipment.)

[fol. 458]

582 Railway Tax Accruals.

Taxes paid State, Parish and Municipalities, Louisiana State Inspection and Supervision tax and Capital Stock Tax for year 1921, equated to test period of seven days. Taxes separated as between main line, side tracks and equipment. Taxes on main line and side tracks assigned to zones on basis of track mileage in each zone. Taxes on equipment assigned to common zone.

Additional charge for transportation service performed by the Union Sulphur Company for the Brimstone Railroad & Canal Company is explained in detail in Exhibit No. —. This expense equated to test period and allocated to common zone.

Additional charge representing proportion of interest rental, maintenance and taxes on tracks of the Union Sulphur Company used by the Brimstone Railroad & Canal Company in its common carrier service is explained in detail in Exhibit No. —. This expense equated to test period and allocated to common zone.

For the purpose of comparison with results derived under above method and formula further exhibits have been prepared as follows:

An exhibit based on the same time study as to engine hours and cars handled but using an average yearly operating expense for the five years ended December 31, 1917, 1918, 1919, 1920 and 1921, and taxes for the year 1921, and adjustments, equated to a seven days' period.

An exhibit based on the same time study as to engine hours and operating costs, taxes and adjustments for the year 1921, equated to the test period, but number of cars handled is based on the average number of cars handled per year for the five years ended December 31, 1917, 1918, 1919, 1920 and 1921; the number of cars handled during the year 1921 and the number of cars handled during the period January to May 1922 inclusive, equated in each instance to a seven days' period.

[61 461]

I. & S. Docket, No. 12969; Witness, Bacon; Exhibit No. 26

Brimstone Railroad & Canal Company

Filed Nov. 19, 1926, W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

Statement Showing by Days and by Zones the Number of Loaded Cars Handled by the Brimstone Railroad & Canal Company May 26 to June 1, 1922, inclusive, the Number of Minutes Required of Engines to Handle the Cars in Each Zone and the Average Number of Minutes per Car, per Zone, Consumed in Handling a Car

Zone	Date																
	May 26		May 27		May 28		May 29		May 30		May 31		June 1		Total		Average minutes per car
	Cars	Min	Cars	Min	Cars	Min	Cars	Min	Cars	Min	Cars	Min	Cars	Min	Cars	Min	
Common Zone																	
Brimstone Railroad Company Engines	89	348	85	353			84	355	77	419	88	332	64	404	487	2211	
Union Sulphur Company Engines in common carrier service		128		157		44		160		177		188		132		986	
Total Common	89	476	85	510	44		84	515	77	596	88	520	64	536	487	3197	6 5647
Southern Pacific	79	64	83	68			66	64	77	61	78	44	64	76	447	377	8434
Kansas City Southern	10	68	2	59			18	61			10	104			40	292	7 3000
Total	89	608	85	637		44	84	640	77	657	88	668	64	612	487	3866	7 9384

Brimstone Railroad & Canal Company

Statement Showing Adjustments in Charges to Operating Expenses of the Brimstone Railroad & Canal Company for the Year Ended December 31, 1921, which Should be Made to Make the Operating Expenses Reflect the Cost of Operation During that Period, These Expenses Having Been Borne by the Union Sulphur Company

Description of charge		Monthly charge	Annual charge	Classification by I. C. C. accounts
Additional charge for salary of Mr. S. W. Maxwell for services as President, having direct supervision over operations, purchases, receipts, and disbursement accounts, etc.				
	Now charged $83 33 per mo.			
	Should be 150 00 " "			
Rent for office of the President, including heat, light, janitor service, etc.		$66 78	$801 36	Gen'l Exp. Sal. & Exp. G. O. Acct. #451
	Now charged per mo.			
	Should be $25 00 " "			
Additional charge for salary of Mr. K. McKerrow for services as Chief Engineer		25 00	300 00	Gen'l Exp. Sal. & Exp. G. O. Acct. #451
	Now charged $25 00 per mo.			
	Should be 100 00 " "			
Rent for office of the Chief Engineer, including heat, light, janitor service, etc.		75 00	900 00	M. of W. & S. Suptee. Acct. #201
	Now charged per mo.			
	Should be $25 00 " "			
Additional charge for salary of bookkeeper.		25 00	300 00	M. of W. & S. Suptee. Acct. #201
	Now charged $20 84 " "			
	Should be 115 00 " "			
Rent for office of Bookkeeper, including heat, light, janitor service, etc.		94 16	1,129 92	Gen'l Exp. S. & E. Clerks & Attds. Acct. #452
	Now charged per mo.			
	Should be $12 50 " "			
Additional charge for salary of Stenographer.		12 50	150 00	Gen'l Exp. O. G. O. Supp. & Exp. Acct. #453
	Now charged " "			
	Should be $62 50 " "			
Rent for office of stenographer, including heat, light, janitor service, etc.		62 50	750 00	Gen'l Exps. S. & E. Clerks & Attds. Acct. #452
	Now charged per mo.			
	Should be $12 50 " "			
Additional charge for salary of Timekeeper.		12 50	150 00	Gen'l Exps. O. G. O. Supp. & Exps. Acct. #453
	Now charged per mo.			
	Should be $50 00 " "			M. of W. & S. Suptee. Acct. #201 50%
[fol. 466]		50 00	600 00	Transp. " " #371 50%
Additional charge for water furnished engines of the Brimstone Railroad & Canal Company, this charge being based on 2 tanks of water per day, 25 days per month at $1.00 per tank.				
	Now charged per mo.			
	Should be $50 00 " "			
Additional charge for fuel oil furnished the Brimstone Railroad & Canal Company, the charge made by the Union Sulphur Company having been at invoice price to it, plus freight charges, with no charges included for interest on investment in fuel oil facilities, handling costs, etc. This charge based on $.25 per barrel over invoice price plus freight charges, this being basis of quotations now being received by the Union Sulphur Company. It is also estimated this would be the overhead cost to the Brimstone Railroad & Canal Company if it were to install its own fuel oil facilities, furnish its own pumper, etc.		50 00	600 00	Transp. Water Stations. Acct. #397
Number of barrels of fuel oil used by the Brimstone Railroad & Canal Co. [illegible] during the year ended December 31, 1921, 1,400				

Canal Company during the year ended December 31, 1921, 4,630 barrels. Additional charge at $.25 per barrel.

Additional charge for rental of engine house, for housing and furnishing steam for steaming up engines of the Brimstone Railroad & Canal Company.

Now charged		per mo.
Should be	$100 00	" "

Additional charge for services of watchman-mate, who handles Brimstone Railroad & Canal Company business passing through warehouse.

Now charged		per mo.
Should be	$40 00	" "

Additional charge for rent of office of agent of the Brimstone Railroad & Canal Company and for warehouse space.

Now charged	$5 00	per mo.
Should be	25 00	" "

Additional charge for labor furnished drying sand used by the Brimstone Railroad & Canal Company engines. Invoice price of sand has been charged to the Brimstone Railroad & Canal Company.

Now charged		per mo.
Should be	$40 80	" "

[fol. 467] (Cost based on 4 hrs. per day, 40c per hour)

Additional charge for transportation services performed by the Union Sulphur Company, with its engines, which service should be performed by the Brimstone Railroad & Canal Company in the conduct of its common carrier service. See statement attached.

Additional charges for proportion of maintenance and repairs, taxes and interest rental on tracks of the Union Sulphur Company used by the Brimstone Railroad & Canal Company in the conduct of its common carrier service. See statement attached.

Maintenance and repairs	$8,146.86
Interest Rental	4,887.73
Taxes	64.17

	1,107.50	Transp. Fuel Train Locos.	Acct. #394
[100.00]	1,200.00	Transp. L. H. Expe. Train	Acct. #400
40.00	480.00	Transp. Sta. Emp. (Lab. at Sta.)	Acct. #373
20.00	240.00	Transp. Sta. Supp. & Expe.	Acct. #376
40.80	489.60	Transp. Other Supp. Train Locos.	Acct. #399
	3,675.55		
		$8,146.86 M. of W. & S. Mtg. Jt. Trks. Y. & O. Fac. Dr.	Acct. #278
	13,098.76	$4,887.73 Joint Facility Rent	Acct. #541
		$64.17 Railway Tax Accruals	Acct. #532
Total	$25,972.69		

Recapitulation

Maintenance of Way and Structures	
#201 Superintendence	$1,500.00
Total Maintenance of Way and Structures	1,500.00
Transportation—Rail Line	
371 Superintendence	300.00
373 Station Employees	480.00
376 Station Supplies and Expenses	240.00
394 Fuel for Train Locomotives	1,107.50
397 Water for Train Locomotives	600.00
399 Other Supplies for Train Locomotives	489.60
400 Engine House Expenses—Train	1,200.00
Total Transportation—Rail Line	4,417.10
General R. O. E.	
451 Sal. & Exp.—General Officers	1,101.36
452 Sal. & Exp.—Clerks and Att'ds	1,879.92
453 General Office Supplies & Expenses	300.00
Total General	3,281.28
Transportation service performed by Union Sulphur Co.	3,675.55
Maintenance, Rental & Tax, Union Sulphur Co. permanent tracks	13,098.76
Grand Total	$25,972.68

[fol. 459] EXHIBIT No. 25, WITNESS BACON—Jun. 16, 1922

I. & S. Docket No. 12969

Brimstone Railroad & Canal Company

Operating Cost Study

Map showing the tracks of the Brimstone Railroad & Canal Company and tracks of the Union Sulphur Company used by the Brimstone Railroad & Canal Company in its common carrier service, also the zones into which these tracks were divided for purpose of test May 26th to June 1, 1922, inclusive.—Filed U. S. Circuit Court, Western District of Louisiana, Nov. 19, 1926. (W. B. Le—, Clerk.)

(Here follow map and exhibits, marked side folio pages 460, 461, 462, 463)

[fol. 464] I. & S. DOCKET No. 12969 WITNESS ——— EXHIBIT No. ———

Brimstone Railroad & Canal Company

Statement showing analysis of taxes reported by the Brimstone Railroad & Canal Company for the year ended December 31, 1921, and amounts applicable to operating expenses.

Total taxes as reported to Interstate Commerce Commission		$21,303.80
Operating Taxes		
State, Parish and Municipal taxes	$10,590.70	
Louisiana State Inspection and Supervision Tax	248.30	
Capital Stock Tax	300.00	
Total		$11,139.00
Non-operating taxes		
Income tax	$9,999.00	
State, Parish and Municipal tax on canal	104.74	
Adjustments	.01	
Total		10,104.74
		$21,303.80
Operating taxes assigned as follows:		
Main Line	$4,413.80	
Sidings	135.70	
Equipment	6,649.47	
	$11,199.00	

These taxes divided on basis of assessment as determined from tax bills on file. Taxes assigned to zones on basis of mileage in each zone for main line and sidings, equipment assigned to common zone.

(Here follow side folio pages 465, 466 and 467).

[fol. 468] I. & S. Docket No. 12869, Witness ——, Exhibit No. —

Brimstone Railroad & Canal Company

Statement showing cost of transportation service performed by the Union Sulphur Company for the Brimstone Railroad & Canal Company during the test period May 26 to June 1, 1922, and extended over a period of 365 days on basis of average cost per day during test period, the Union Sulphur Company engines working Sundays as well as week days.

Costs, per day, of operating Union Sulphur Company engines, which are chargeable, on engine hour basis, to the Brimstone Railroad & Canal Company, when performing common carrier service which should be performed by the Brimstone Railroad & Canal Company:

Rent of Engines per day	$10 00	
Wages of Crew " "	12 34	
Fuel Oil 9 barrels per day at $1.22 per barrel	10 98	
Water, sand, oil & waste, per day	1 00	
Cost per day—8 hours		$34 32
Cost per hour		$4 29

Number hours worked by Union Sulphur Company engines during test period, in common carrier service:

	Hrs	Min
May 26, 1921	2	08
" 27, 1921	2	37
" 28, 1921		44
" 29, 1921	2	40
" 30, 1921	2	57
" 31, 1921	2	08
June 1, 1921	2	12
Total	16	26

Cost to Brimstone Railroad & Canal Company during the test period at $4.29 per hour	$70 49	
Average Cost per day	$10 07	
Cost to the Brimstone Railroad & Canal Company for transportation service performed for its account by the Union Sulphur Company for the year 1921, on basis of $10.07 per day		$3,675 55

[fol. 469] I. & S. Docket No. 12869, Witness ——— ———, Exhibit No. —

Brimstone Railroad & Canal Company

Statement showing expenses incurred by the Union Sulphur Company in maintenance and repairs of its permanent tracks, for the year ended December 31, 1921, and the expense applicable to that portion of those tracks which are used by the Brimstone Railroad & Canal Company in its common carrier service, also taxes and interest rental applicable to those tracks, and amount per annum which should be paid by the Brimstone Railroad & Canal Company for the use of the tracks.

Cost of Maintenance and repairs of permanent tracks of the Union Sulphur Company for the year ended December 31, 1921:

January 1921	$1,558 87
February "	1,476 44
March "	1,859 25
April "	2,321 70
May "	1,344 11
June "	938 40
July "	1,864 28
August "	1,584 83
September "	1,341 14
October "	1,163 43
November "	2,086 55
December "	1,037 67
Total	$18,576 67

Number of Miles of Union Sulphur Company permanent tracks 8.01 Mi.

common carrier service:

Track A to C (colored blue)	6739'		
" F to G " "	2497'		
" F 1 to H " "	2281'		
" T to U " "	2901'		
" Crossover " "	165'		
Tracks R to O (colored green)		2.76 Mi.	
Track P to Q " "	4482'		
" R to S " "	585'		
	745'		
		1.12 Mi.	

Estimated expense of maintenance and repairs of permanent tracks for the year 1921, used by the Brimstone Railroad & Canal Company in its common carrier services:

Track A to C (colored blue)	6739'		
" F to G " "	2497'		
" F 1 to H " "	2281'		
" T to U " "	2901'		
" Crossover " "	165'		
		2.76 Mi.	$8,190.39

(Expense of maintenance and repairs of these tracks based on ratio of 1½ to 1 per mile account heavy usage, these tracks being in constant use during working hours in movement of empty cars into and loaded cars out of sulphur bins; also movement of fuel oil to storage tanks. Actual expense of maintenance and repairs of these tracks not available from Union Sulphur Company records.)

[fol 470] Estimated expense of maintenance and repairs, etc.:

Tracks B to O (colored green)	$487	
Track P to Q " "	585	
" R to S " "	743	
	1 12 Mi.	$2,215 74

(Expense of Maintenance and repairs of these tracks based on average cost per mile of maintaining and repairing all other permanent tracks after excluding tracks A to C, F to G, F 1 to H, T to U and crossover track)

Estimated percentage of use of Union Sulphur Company permanent tracks by the Brimstone Railroad & Canal Company during the year 1921, in its common carrier service and the proportion of maintenance and repair expenses which should be borne by the Brimstone Railroad & Canal Company:

	Total maintenance and repair expense	Percentage of use by B. R. R. & C. Co.	Proportion of cost to B. R. R. & C. Co.
Track A to C (colored blue)			
" F to G " "			
" F 1 to H " "	$8,196 39	90%	$7,371 35
" T to U " "			
" Crossover " "			
Tracks B to O (colored green)			
Track P to Q " "	$2,215 74	35%	$775 51
" R to S " "			

(Percentage of use based on general observation of operations and estimates made by operating officials and employees of the Union Sulphur Com

pany and the Brimstone Railroad & Canal Company. Actual use by each company not available.)

Brimstone Railroad & Canal Company's proportion of Maintenance and Repairs	$8,146 86

Interest Rental—Returns to which the Union Sulphur Company is entitled at rate of 6% per annum on the value of its permanent tracks used by the Brimstone Railroad & Canal Company in its common carrier services.

	Length in miles	Valuation	Interest rental per annum at 6%
Track A to C (colored blue)			
" F to G " "			
" F 1 to H " "			
" T to U " "	2 76	$76,811 00	$4,608 66
" Crossover " "			
Tracks R to O " green			
Track P to Q " "			
" R to S " "	1 12	$35,235 00	$2,114 10

[fol. 471] Proportion of Interest Rental due the Union Sulphur Company by the Brimstone Railroad & Canal Company on basis of use as explained under maintenance and repairs:

	Interest rental per annum at 6%	B R R & C Co. percentage	B R R & C Co. proportion
Track A to C (colored blue)			
" F to G " "			
" F 1 to H " "	$4,608 66	90%	$4,147 79
" T to U " "			
" Crossover " "			
Tracks B to Q " green			
Track P to Q " "	$2,114 10	35%	$739 94
" R to S " "			
Brimstone Railroad & Canal Company's proportion of Interest Rental			$4,887 73

Brimstone Railroad & Canal Company

Statement Showing the Number of Engine Hours Worked During the Test Period May 29 to June 4, 1922, Inclusive; the Allocation of Operating Expenses, Including Taxes, Adjustments and Return on Value of Property Held for and Used in the Service of Transportation for the Public Generally, for the Year Ended December 31, 1921, Equated to the Test Period, to the Three Zones into which the Brimstone Railroad & Canal Company was Divided for the Purpose of the Cost Study, and the Cost per Engine Hour in Each Zone

	Common Zone Time		Sou. Pac. Zone Time		K. C. S. Zone Time		Total Time	
	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.
Number of engine hours worked during test period:								
Brimstone Railroad & Canal Company Engine		2211		377		292		2880
Union Sulphur Company engines in performance of common carrier service		986						986
Total	53	17	6	17	4	32	64	26
Operating expenses, including taxes and adjustments (equated) allocated as common to all three zones							$2,577.79	
Cost per engine hour (exclusive of Union Sulphur Co. engine								

[illegible] of the amount allocated as common to all three

hours (exclusive of Union Sulphur Co. engine time) worked in each zone	$1 978 99	$337 44	$261 36	2 577 79
Operating expenses, including taxes and adjustments (equated) allocated directly to each zone	529 75	25 15	309 77	864 67
Total operating expended including taxes and adjustments equated to the test period	2 508 74	362 59	571 13	3 442 46
Cost per engine hour for each zone	47 0830	57 7006	117 3555	53 4267
Total operating expenses, including taxes and adjustments ated return on value of property held for and used in the service of transportation for the public generally				
Total operating expenses, as above	2 508 74	362 59	571 13	3 442 46
Return on value of property held for and used in the service of transportation for the public generally	788 55	15 65	155 62	959 82
Total	$3 297 29	$378 24	$726 75	$4 402 28
Cost per engine hour, for each zone (including return on value of property, etc.)	$61 8822	$60 1973	$149 3322	$68 3230

Taxes.—Proportion of taxes paid by the Union Sulphur Company for the year 1921 on permanent tracks used by the Brimstone Railroad & Canal Company in its common carrier services which is chargeable to that company:

	Estimated taxes paid for year 1921	B. R. R. & C. Co. percentage	B. R. R. & C. Co. proportion
Track A to C (colored blue)			
" F to G " "	$52 59	90%	$47 33
" F-1 to H " "			
" T to U " "	$14 47	90%	$13 02
" Crossover " "			
Tracks B to O " green			
Track P to Q " "	$10 95	35%	3 82
" R to S " "			
Brimstone Railroad & Canal Company's proportion of taxes			$64 17

(Taxes based on $20,000.00 per mile assessment value on track A to C (colored blue) and $4,000.00 per mile assessment value for other tracks; tax rate 24.45 mills. Actual taxes paid not available.)

(Here follows side folio page 472)

[fol. 473] I. & S. Docket, No. 12969; Witness, Bacon; Exhibit No. 29

Brimstone Railroad & Canal Company

Statement Showing Amount of Return to Which the Brimstone Railroad & Canal Company is Entitled Upon the Property Held for and used in the Service of Transportation for the Public Generally, Based on a Rate of Six (6) Per Annum on Value of the Property as of December 31, 1921, Subdivided as Between Zones and Equated to the Test Period May 26 to June 1, 1922, Inclusive.

Zone	Valuation	Rate of return	Amount of return per annum	Amount of return per annum equated to the test period
Common	$685,219 10	6%	$41,113 15	$788 55
Southern Pacific	13,596 04	6%	815 76	15 65
	135,230 86	6%	8,113 85	155 62
Total				
Kansas City Southern	$834,046 00	6%	$50,042 76	959 82

Statement, by Zones, Showing Cost of Reproduction New as of December 31, 1921

I Road.

Account:	K. C. S.	Sou. Pac.	Common	Total
1. Engineering	$2,095 75	$152 14	$1,410 11	$3,658 00
2. Land for Transportation Purposes	6,246 45	234 50	441 05	6,922 00
3. Grading	11,429 42	836 08	3,859 28	16,141 00
6. Bridges, Trestles and Culverts	3,794 40	103 76	693 84	4,592 00
8. Ties	11,826 17	836 08	5,070 75	17,733 00
9. Rails	15,237 50	874 50	7,775 00	23,887 00
10. Other Track Material	2,302 90	193 80	1,411 30	3,908 00
11. Ballast	1,174 64	454 96	6,185 40	7,815 00
12. Track Laying and surfacing	5,763 00	425 00	3,533 00	9,721 00
13. Right-of-way Fences			48 00	48 00
15. Crossings and signs	560 63		987 37	1,548 00
16. Stations and Office Buildings		50 00	4,600 00	4,650 00
17. Roadway Buildings			300 00	300 00
37 " Machines			606 00	606 00
38 " Small Tools			125 00	125 00
43. Other Expenditures-Road.	305 00	13 00	50 00	368 00
Total Road	$60,735 86	$4,190 04	$37,096 10	$102,022 00

Statement, by Zones, Showing Cost of Reproduction New as of December 31, 1921—Continued

	K C S	Sou Pac	Common	Total
II Equipment.				
51. Steam Locomotives			$32,046 00	$32,046 00
53. Freight Train Cars			124,155 00	124,155 00
Total Equipment			$156,201 00	$156,201 00
III General Expenditures.				
71 to 75 and 77 Gen'l Expenditures	$817 00	$60 00	$550 00	$1,427 00
76. Interest During Construction	2,864 00	195 00	4,043 00	7,102 00
Total Gen'l Expenditures	$3,681 00	255 00	$4,593 00	$8,529 00
Total Acct's 1 to 77	$64,416 86	$4,445 04	$197,890 10	$266,752 00
110% Increase 1920 over 1914 Unit Cost Year, on Acct's 1 to 77 except 2	63,987 00	4,632 00	217,194 00	285,813 00
Additions & Betterments to 12-31-1921	6,827 00	4,519 00	220,590 00	231,936 00
Working Capital			31,639 00	31,639 00
Materials and Supplies			4,667 00	4,667 00
Sixteen Miles of Right-of-way for Canal			13,239 00	13,239 00
Total Cost to Reproduce New 12-21-1921	$135,230 86	$13,596 04	$685,219 10	$834,046 00

Also pages 470, 476, and 477.

Cost of Repro

Account	Unit	Cost per Unit	K. C. Unit
I Road:			
1 Engineering			
2 Land for Transportation Purposes			
Cut over timber lands	Ac.	$35 00	4
Town Lots	"	400 00	7
Rice Land	"	110 00	2
3 Grading			
Earth Embankment	Cu. Yd.	16	64
Clearing	Ac.	25 00	4
6 Bridges, Trestles & Culverts			
Pile Trestle	L. Ft.	17 00	
Corrugated Iron Pipe 24" New	"	1.81	
" " " 36" "	"	3 07	
Wrought " " 8" S. H.	"	.55	
Hand " "	"	35 00	
38 Roadway Small Tools			
Small Tools	Set	125 00	
43 Other Expenditures			
Miscellaneous	Mi.	50 00	
Total 1 to 43, inclusive			
II Equipment			
51 Steam Locomotives			
53 Freight Train Cars			
Total 51 and 53			
III General Expenditures:			
71 to 75 and 77 Other Expenditures—General			
76 Interest During Construction			
Total 71 to 77, inclusive			
Grand Total			

Brunstone Railroad and Canal Company

Reproduction New as of June 30, 1918, Plus Additions and Betterments to December 31, 1921

Zones									
K. C. S. Units	Value	Soq. Pac. Units	Value	Common Units	Value	Totals Units	Value	By Acct.	Remarks
	$2,095.75		$152.14		$1,410.11		$3,658.00	$3,658.00	
48.07	1,082.45	6.7	234.50	12.6	441.05	67.37	2,358.00		
5.82	2,328.00					5.82	2,328.00	..	
20.33	2,236.00					20.33	2,236.00	6,922.00	
64.137	10,261.92	4.280	684.80	22.157	3,544.28	90.574	14,491.00	..	
46.7	1,167.50	6.7	167.50	12.6	315.00	66	1,650.00	10,141.00	
120	2,040.00				..	120	2,040.00		
16	29.00				.	16	29.00		
219	672.00					219	672.00		
		128	70.40	186	102.60	314	173.00	..	
				1	35.00	1	35.00	600.00	
				1	125.00	1	125.00	125.00	
0.1	$395.00	25	13.00	1	50.00	7.35	308.00	308.00	
	$60,735.86		$4,180.04		$37,086.10		$102,022.00	$102,022.00	
					$32,046.00		$32,046.00		
					124,155.00		124,155.00	$156,201.00	
					$156,201.00		$156,201.00	$156,201.00	
	$817.00		$60.00		$550.00		$1,427.00		
	2,864.00		195.00		4,043.00		7,102.00	$8,529.00	
	$3,681.00		$255.00		$4,593.00		$8,529.00	$8,529.00	
	$64,416.86		$4,445.04		$197,880.10		$266,752.00	$266,752.00	
	63,987.00		4,632.00		217,194.00		285,813.00	285,813.00	110% Increase 1920 over 1914, unit cost year, on Accts. 1 to 77 except #2 Land
	6,827.00		4,519.00		220,593.00		231,939.00	231,939.00	A. & B. to 12-31-21
					31,639.00		31,639.00	31,639.00	Working Capital
					4,967.00		4,967.00	4,967.00	Material & Supplies
					13,239.00		13,239.00	13,239.00	16 Miles of R. of W. for Canal
	$135,230.86		$13,596.04		$685,219.10		$834,046.00	$834,046.00	

[fol. 478] Brimstone Railroad & Canal Company

State of Property Owned by The Union Sulphur Company and Used Jointly With the Brimstone Railroad & Canal Company

(Shown in Blue on Map)

I. Road:

Account:	
1. Engineering	$1,240 00
2. Land for Transportation Purposes	484 00
3. Grading	5,178 00
6. Bridges, Trestles and Culverts	2,038 00
8. Ties	5,099 00
9. Rails	9,481 00
10. Other Track Material	2,068 00
11. Ballast	3,323 00
12. Track Laying and Surfacing	3,383 00
17. Roadway Buildings	100 00
37. Roadway Machines	56 00
38. Roadway Small Tools	125 00
43. Other Expenditures Road	138 00
Total Road	$32,713 00

III. General Expenditures:

Account:	
71 to 75 and 77—General Expenditures	$483 00
76. Interest During Construction	1,501 00
Total General Expenditures	$1,984 00
" Accounts 1 to 77	34,697 00
Working Capital, Material & Supplies	4,480 00
110% increase 1920 over 1914, unit cost year, on Accounts 1 to 77 except #2—Land	37,634 00
Total Cost to Reproduce New as of December 31, 1921	$67,811 00

Statement of Property Owned by the Union Sulphur Company and Used Jointly With the Brimstone Railroad & Canal Company

(Shown in Blue on Map)

Detail

2.761 Miles

I. Road:

Account:	Unit	Value	No. units	Total
1. Engineering 4% on Accounts 3 to 43 Inclusive	.....	.....		$1,240 00
2. Land for Transportation Purposes Right of Way	Ac.	$35 00	13 83	484 00
3. Grading:				
Embankment Roadway	Cu. Yds.	16	26,417	4,227 00
Excavation—Ditches	" "	16	1,617	259 00
Clearing and grubbing	Ac.	50 00	13 83	692 00
				5,178 00

6. Bridges, Trestles and Culverts:				
Concrete—Reinforced	Cu. Yds.	14.50	82	1,204 00
" —Plain	" "	12 45	30	373 00
Timber boxes—Heart Pine	M. B. M.	16 50	1 2	20 00
W. I. Pipe 10" S. H.	L. Ft.	76	420	319 00
" " 20" "	"	1 63	60	98 00
Excavation	Cu. Yds.	16	150	24 00
				2,038 00
8. Ties:				
White Oak	Ea.	69	3,518	2,427 00
Pine	"	44	5,277	2,322 00
Heart Pine—Switch	M. B. M.	16 50	21 2	350 00
				5,099 00

[fol. 480]

9. Rails:				
Bessemer—90#	G. T.	$34 90	69 00	
" —60#	"	34 90	143 70	
" —50#	"	34 90	56 43	$9,393 00
Taper Rails 8' 3" 90-60	Pr.	18 00	3	54 00
" " 8' 3" 60-50	"	17 00	2	34 00
				9,481 00

Statement of Property Owned, etc.—Continued

	Unit	Value	No. units	Total
10. Other Track Material:				
Spikes 5½" x 9/16	Cwt.	2 43	189 0	459 00
Bolts	"	2 43	41 2	100 00
Angle Bars	"	1 90	408	775 00
Tie Plates	"	1 89	13 2	25 00
Rail Braces	Ea.	12	200	24 00
Switch—Complete 15' 90#	"	39 00	3	117 00
" " 15' 60#	"	32 16	5	161 00
Frogs 90# 11' #7 Rigid	"	36 00	3	108 00
" 60# 7' #7 "	"	28 30	5	142 00
Guard Rails Complete 90#	Pair	13 00	3	39 00
" " " 60#	"	12 30	5	62 00
Ground Throw Switch Stands	Ea.	7 00	8	56 00
				2,068 00
11. Ballast:				
Shell	Cu. Yds.	2 00	1,563	3,126 00
Brick bats	" "	60	329	197 00
				3,323 00
12. Track Laying and Surfacing:				
Track Laying and Surfacing	Mile	1,020 00	2 76	2,815 00
Applying ballast	Cu. Yds.	30	1,892	568 00
				3,383 00
17. Roadway Buildings—Tool House	Each	100 00	1	100 00

37. Roadway Machines:				
Push Car	Each	21 00	1	21 00
Hand "	"	35 00	1	35 00
				56 00
38. Roadway Small Tools—Tools	Set	125 00	1	125 00
43. Other Expenditures—Road Miscellaneous				
Total Road	Mile	50 00	2 76	138 00
				$32,713 00

[fol. 481]

III. General Expenditures:

Account:

71 to 75 and 77—General Expenditures 1½% on Accounts 1 and 3 to 43	$483 00
76. Interest During Construction—6% for 9 months, one-half the construction period plus 3 months, on accounts 1 to 43, except 2, on accounts 71 to 75 and 77 and 6% for 12 months on account 2	$1,501 00
Total General Expenditures	1,984 00
" Accounts 1 to 77	34,697 00
Working Capital, Material and Supplies	4,480 00
110% increase 1920 over 1914, unit cost year, on Accounts 1 to 77 except #2—Land	37,634 00
Total Cost to Reproduce New as of December 31, 1921	$76,811 00

[fol. 482] Brimstone Railroad & Canal Company

Statement of Property Owned by the Union Sulphur Company and Used Jointly with the Brimstone Railroad & Canal Company

(Shown in Green on Map)

I. Road:

Account:

1. Engineering	$575 00
2. Land for Transportation Purposes	101 00
3. Grading	2,774 00
6. Bridges, Trestles and Culverts	496 00
8. Ties	2,477 00
9. Rails	3,787 00
10. Other Track Material	1,365 00
11. Ballast	1,936 00
12. Track Laying and Surfacing	1,486 00
43. Other Expenditures—Road	56 00
Total Road	$15,053 00

III. General Expenditures:

Account:

71 to 75 and 77—General Expenditures	$224 00
76. Interest During Construction	689 00
Total General Expenditures	$913 00
" " 1 to 77	15,966 00
Working Capital, Material and Supplies	1,817 00
110% increase 1920 over 1914, unit cost year on Accounts 1 to 77, except #2—Land	17,452 00
Total Cost to Reproduce New as of Dec. 31, 1921	$35,235 00

Statement of Property Owned by the Union Sulphur Company and Used Jointly with the Brimstone Railroad & Canal Company

(Shown in Green on Map)

Detail

1.12 Miles

I. Road:

Account:	Unit	Value	No. units	Total
1. Engineering—4% on Accounts 3 to 43 Inclusive				$575 00
2. Land for Transportation Purposes—				
Right of Way	Ac.	$35 00	2 89	101 00
3. Grading:				
Embankment—Roadway	Cu. Yds.	16	15,772	2,524 00
Excavation—Ditches	" "	16	656	105 00
Clearing and Grubbing	Ac.	50 00	2 89	145 00
				2,774 00

Statement of Property Owned, etc.—Continued

	Unit	Value	No. units	Total
6. Bridges, Trestles and Culverts:				
Timber Boxes—Heart Pine	M. B. M.	16 50	2 4	40 00
Corrugated Iron Pipe 36"	L. Ft.	3 07	40	123 00
" " " 20"	"	1 70	40	68 00
Wrought " " 10" S. H	"	76	220	167 00
" " " 20" S. H	"	1.63	55	90 00
Excavation	Cu. Yds.	16	50	8 00
				496 00
8. Ties:				
White Oak	Ea.	69	1,542	1,064 00
Pine	"	44	2,316	1,019 00
Heart Pine—Switch	M. B. M.	16 50	23 9	394 00
				2,477 00
9. Rails:				
Bessemer—90#	G. T.	34 90	1 74	
" —60#	"	34 90	106 24	3,769 00
Taper Rail—90—60	Pr.	18 00	1	18 00
				3,787 00
[fol. 484]				
10. Other Track Material:				
Spikes	Cwt.	$2 43	78	$190 00
Bolts	"	2 43	17	41 00

	Angle Bars	"	1 90	171	324 00
	Switch—Complete 15′ 90#	Ea.	39 00	1	39 00
	" " 15′ 60#	"	32 16	9	289 00
	Frog—90# 11′ #7 Rigid	"	36 00	1	36 00
	" 60# 7′ #7 "	"	28 30	9	255 00
	Guard Rails—Complete 90#	Pr.	13 00	1	13 00
	" " " 60#	"	12 00	9	108 00
	Ground Throw Switch Stands	Ea.	7 00	10	70 00
					$1,365 00
11.	Ballast:				
	Shell	Cu. Yds.	2 00	891	1,782 00
	Brick Bats	"	60	256	154 00
					1,936 00
12.	Track Laying & Surfacing:				
	Track Laying & Surfacing	Mile	1,020 00	1 12	1,142 00
	Applying Ballast	Cu. Yds.	30	1,147	344 00
					1,486 00
43.	Other Expenditures—Road—Miscellaneous	Mi.	50 00	1 12	56 00
	Total Road				$15,053 00

Statement of Property Owned—Continued

III. General Expenditures:

Account:	Unit	Value	No. units	Total
71 to 75 and 77—General Expenditures—1½% on Accounts 1 and 3 to 43				224 00
76. Interest During Construction 6% for 9 months, one-half the construction period plus 3 months, on Accounts 1 to 43, except 2, on accounts 71 to 75 and 77 and 6% for 12 months on Account 2.				689 00
Total General Expenditures				$913 00
" Accounts 1 to 77				15,966 00
Working Capital, Material and Supplies 110% increase 1920 over 1914, unit cost year on Accounts 1 to 77, except #2.				1,817 00
Land				17,452 00
Total Cost to Reproduce New as of December 31, 1921				$35,235 00

(Here follows exhibit marked side folio page 485)

[fol. 485]

Recapitulation of Study of Operating Costs of the Brimstone Railroad & Canal Company

Cars interchanged with	Total number of cars handled	Total number of minutes required	Average number of minutes per car
Southern Pacific Company	447	2934	6.5647
Kansas City Southern Ry. Co	40	263	6.5647
Total	487	3197	6.5647

Recapitulation of Study of Operating Costs of the Brimstone Railroad & Canal Comp

Cars interchanged with	Total number of cars handled	Total number of minutes required	Average number of minutes per car
Southern Pacific Company	447	2934	6.5647
Kansas City Southern Ry. Co	40	263	6.5647
Total	487	3197	6.5647

I. & S. Docket, No. 12969; Witness, Bacon; Exhibit No. 30

Filed Nov. 19, 1926, W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

Brimstone Railroad & Canal Company

...ny in the Conduct of Its Common Carrier Services as Developed During the Test Period May 26 to June 1, 1922, Inclusive, Not Including a Charge for Return on Value of Property Separately the Cost of Handling Its Interchanged Business with the Southern Pacific Company and the Kansas City Southern Railway Company

			Average time and cost of handling through zones							
...mon Zone			Southern Pacific Zone					Kansas City Southern Zone		
Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour
$47 0830	$2,302 36	$5 1514	377	8434	$57 7066	$302 59	$ 8111			
47 0830	206 39	5 1514						292	7 3000	$117 3555
$47 0830	$2,508 74	$5 1514	377	8434	$57 7066	$302 59	$ 8111	292	7 3000	$117 3555

...pany in the Conduct of Its Common Carrier Services as Developed During the Test Period May 26 to June 1, 1922, Inclusive, Including a Charge for Return on Value of Property Separately the Cost of Handling Its Interchanged Business with the Southern Pacific Company and the Kansas City Southern Railway Company

			Average time and cost of handling through zones							
...mon Zone			Southern Pacific Zone					Kansas City Southern Zone		
Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour
$61 8822	$3,026 04	$6 7706	377	8434	$60 1973	$378 24	$ 8462			
61 8822	271 25	6 7706						292	7 3000	$149 3322
$61 8822	$3,297 29	$6 7706	377	8434	$60 1973	$378 24	$ 8462	292	7 3000	$149 3322

ESS, BACON, EXHIBIT NO. 30

rict Court, Western District of Louisiana

Canal Company

6 to June 1, 1922, Inclusive, Not Including a Charge for Return on Value of Property Held for and Used in the Service of Transportation for the Public Generally, Showing ern Pacific Company and the Kansas City Southern Railway Company

	Average time and cost of handling through zones										
	cific Zone		Kansas City Southern Zone					Total average cost per car			
	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Average cost per car in Common Zone	Sou. Pac. Zone	K. C. S. Zone	Total
	$362 59	$ 8111						$5 1514	$ 8111		$5 9625
			292	7 3000	$117 3555	$571 13	$14 2783	5 1514		$14 2783	19 4297
	$362 59	$ 8111	292	7 3000	$117 3555	$571 13	$14 2783				$7 0687

26 to June 1, 1922, Inclusive, Including a Charge for Return on Value of Property Held for and Used in the Service of Transportation for the Public Generally, Showing ern Pacific Company and the Kansas City Southern Railway Company

	Average time and cost of handling through zones										
	Pacific Zone		Kansas City Southern Zone					Total Average Cost per Car			
	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Average cost per car in Common Zone	Sou. Pac. Zone	K. C. S. Zone	Total
	$378 24	$ 8462						$6 7706	$ 8462		$7 6168
			292	7 3000	$149 3322	$726 75	$18 1688	6 7706		$18 1688	24 9394
	$378 24	$ 8462	292	7 3000	$149 3322	$726 75	$18 1688				$9 0396

[fol. 486] I. C. C. Docket, No. 12969, Witness, Bacon; Exhibit No. —

Brimstone Railroad & Canal Company Operating Cost Study

Exhibit showing cost, as developed by study made May 26 to June 1, 1922, inclusive, to the Brimstone Railroad & Canal Company for handling its interchange business with the Southern Pacific Company and the Kansas City Southern Railway Company except return on investment figures included in this statement are based on cost of reproduction new, December 31, 1921.

(Engine hour time, number of cars handled, operating expenses and adjustments (except interest rental on Union Sulphur Co. property used by Brimstone Railroad & Canal Co.) are the same in this exhibit as figures used in exhibits presented at hearing in Memphis on November 14, 1922).

[fol. 487] Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

Brimstone Railroad & Canal Company

Statement Showing Engine Hour Costs on Basis of Return on Investment on Cost of Reproduction New December 31, 1921

Brimstone Railroad & Canal Company

Statement showing the number of engine hours worked during the test period May 29 to June 1, 1922, inclusive, the allocation of operating expenses, including taxes, adjustments and return on value on basis of cost of reproduction new, December 31, 1921, of property held for and used in the service of transportation for the public generally, for the year ended December 31, 1921, as related to the test period, to the three zones into which the Brimstone Railroad & Canal Company was divided for the purpose of the cost study, and the cost per engine hour in each zone.

	Common Zone		Sou. Pac. Zone		K. C. S. Zone		Total	
	Time		Time		Time		Time	
	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.
Number of Engine Hours worked during test period:								
Brimstone Railroad & Canal Company Engine		2211		377		292		2880
Union Sulphur Company engines in performance of common carrier service		986						986
Total	53	17	6	17	4	52	64	26
Operating expenses, including Taxes and Adjustments (equated) allocated as common to all three zones								$2,577.79
Cost per engine hour (exclusive of Union Sulphur Co. engine time) of the expenses allocated as common to all three zones								53 704

[fol 489] Brimston

Statement Showing Results of Time Study in Nu

[fol 490] I. C. C. Docket No.

Brimstone

Statement Showing by Days and by Zones the Number of Loaded Cars Handl
of Minutes Required of Engines to Handle the Cars in Each Zone

Zone	May 26		May 27		May 2	
	Cars	Min	Cars	Min	Cars	
Common Zone						
Brimstone Railroad Company						
Engines	89	348	85	353		
Union Sulphur Company Engines						
in common carrier service		128		157		
Total Common Zone	89	476	85	510		
Southern Pacific Zone	79	64	83	68		
Kansas City Southern Zone	10	68	2	59		
Total	89	608	85	637		

analysis of adjustments, analysis of charges made

ilroad & Canal Company

of Cars Handled and Engine Time Consumed During Test Period

9, Witness ——— Exhibit No. —

lroad & Canal Company

y the Brimstone Railroad & Canal Company May 29 to June 1, 1922, inclusive, the Number the Average Number of Minutes per Car, per Zone, Consumed in Handling a Car

	Date									
May 29		May 30		May 31		June 1		Total		Average minutes per car
Cars	Min	Cars	Min	Cars	Min	Cars	Min	Cars	Min	
84	355	77	419	88	332	64	404	487	2211	
	160		177		188		132		986	
84	515	77	596	88	520	64	536	487	3197	6 5647
66	64	77	61	78	44	64	76	447	377	8434
18	61			10	104			40	292	7 3000
84	640	77	657	88	668	64	612	487	3866	7 9384

[fol. 491] Brimstone Railroad & Canal Company

Statement showing operating charges and adjustments made in the audited accounts on which engine hour costs were computed, including: analysis of taxes, analysis of adjustments, analysis of charges made account Union Sulphur Co. service rendered Brimstone Railroad & Canal Co., analysis of charges made for maintenance, interest rental and taxes on Union Sulphur Co. property used by Brimstone Railroad & Canal Company

[fol. 492] I. C. C. Docket, No. 12969; Witness, ——— ———; Exhibit No. —

Brimstone Railroad & Canal Company

Statement showing in detail by Interstate Commerce Commission Classification of Accounts, the operating expenses, including taxes of the Brimstone Railroad & Canal Company for the year ended December 31, 1921, as appearing on the books of that company, the adjustments which should be made in the accounts to make them reflect the cost of operations during that period and the total cost of operations, including the adjustments, also showing the total operating expenses equated to the seven days test period, May 26 to June 1, 1922, inclusive, and the equated amounts separated as to amounts allocated directly to each of the three zones into which the Brimstone Railroad & Canal Company has been divided for the purpose of the cost study and amounts allocated as applying in common to all three of the zones

		1	2	3	4	5	6	7	8	9
	Account						Allocation by zones Expenses allocated directly to			
No.	Description	Operating expenses and taxes as reflected by audited accounts	Adjustments	Adjustments	Total operating expenses, including taxes and adjustments	Total operating expenses, including taxes and adjustments equated to the test period	Common Zone	Southern Pacific Zone	Kansas City Southern Zone	Expenses allocated as common to all three zones
	Maintenance of Way and Structures:									
201	Superintendence	$799 92	$1,500 00		$2,299 92	$44 11	$8 91	$2 96	$32 24	
202	Roadway Maintenance	364 50			364 50	6 99	1 41	47	5 11	
212	Ties	1,189 49			1,189 49	22 81	4 61	1 53	16 67	
214	Rails	623 01			623 01	11 95	2 41	.80	8 74	
216	Other Track Material	49 13			49 13	94	19	06	69	
220	Track Laying & Surfacing	12,075 68			12,075 68	231 61	46 76	15 56	169 29	
225	Crossings & Signs	143 91			143 91	2 76	56	19	2 01	
227	Stations and Office Buildings	240 47			240 47	4 61	93	31	3 37	
269	Roadway Machines	87 46			87 46	1 68	34	11	1 23	
271	Small Tools & Supplies	35 30			35 30	68	14	05	49	
	Total Maintenance of Way & Structures	$15,608 87	$1,500 00		$17,108 87	$328 14	$66 26	$22 04	$239 84	
	Maintenance of Equipment:									
301	Superintendence	$1,942 32			$1,942 32	$37 25				$37 25
308	Steam Locomotives—Repairs	7,296 33			7,296 33	139 37				139 37
309	Steam Locomotives—Depreciation	1,267 32			1,267 32	24 31				24 31
314	Freight-Train Cars—Repairs	23,571 09			23,571 09	452 09				452 09
315	Freight-Train Cars—Depreciation	35,091 60			35,091 60	673 06				673 06
316	Freight-Train Cars—Retirements	225 00			225 00	4 31				4 31
	Total Maintenance of Equipment	$69,363 66			$69,363 66	$1,330 39				$1,330 39
	Traffic									
351	Superintendence	$15,021 24			$15,021 24	$288 16				$288 16
354	Traffic Associations	11 22			11 22	22				22
358	Stationery and Printing	391 30			391 30	7 51				7 51
	Total Traffic	$15,426 76			$15,426 76	$295 89				$295 89
[fol. 493]	Transportation—Rail Line:									
371	Superintendence	$385 58	$300 00		$685 58	$13 15				$13 15
373	Station Employees	2,625 00	480 00		3,105 00	59 55				59 55
394	Weighing, Inspection and Demurrage Bureaus	153 00			153 00	2 93				2 93
[illegible]	[illegible]	48 08	240 00		288 08	5 52				[illegible]

1,107 50		5,706 99	109 46				109 46
600 00		600 00	11 51				11 51
489 60		632 52	12 13				12 13
1,200 00		3,440 25	65 99				65 99
..		7,460 39	143 09				143 09
		511 42	9 81				9 81
		203 56	3 91				3 91
		1 30	03				03
4,417 10		$26,426 81	$506 87				$506 87
1,101 36		$5,581 55	$107 05				$107 05
1,879 92		5,830 00	111 82				111 82
300 00		619 35	11 88				11 88
		6,813 75	130 69				130 69
		210 11	4 03				4 03
..		3,000 00	57 54				57 54
		364 23	6 99				6 99
		516 12	9 90				9 90
		247 14	4 74				4 74
3,281 28		$23,182 25	$444 64				$444 64
9,198 38		$151,508 35	$2,905 93	$66 26	$22 04	$239 84	$2,577 79
	$10,104 74	$11,199 06	$214 80	$141 76	$3 11	$60 93	
3,675 55		$3,675 55	$70 50	$70 50			
1,899 40		$11,899 40	$228 21	$228 21			
4,773 33	$10,104 74	$178,282 36	$3,419 44	$506 73	$25 15	$300 77	$2,577 79

394	Fuel for Train Locomotives	4,599 49	1,107
397	Water for Train Locomotives		60
399	Other Supplies for Train Locomotives	142 92	48
400	Engine House Expenses—Train	2,240 25	1,200
401	Trainmen	7,460 39	..
402	Train Supplies & Expenses	511 42	
410	Stationery & Printing	203 56	
418	Loss and Damage—Freight	1 30	
	Total Transportation—Rail Line	$22,009 71	$4,417
	General		
451	Salaries & Expenses of General Officers	$4,480 19	$1,101
452	Salaries & Expenses of Clerks & Attendants	3,950 08	1,879
453	General Office Supplies & Expenses	319 35	300
454	Law Expenses	6,813 75	
455	Insurance	210 11	
457	Pensions	3,000 00	
458	Stationery & Printing	364 23	
459	Valuation	516 12	
460	Other Expenses	247 14	
	Total General	$19,900 97	$3,281
	Total Railway Operating Expenses	$142,309 97	$9,198
532	Railway Tax Accruals	$21,303 80	
	Additional charge for transportation services performed by the Union Sulphur Company, which services should be performed by the Brimstone Railroad and Canal Company in the conduct of its common carrier services		$3,675
	Additional charge representing proportion of rental, maintenance and taxes on tracks of the Union Sulphur Company used jointly by the Brimstone Railroad and Canal Company in the conduct of its common carrier services. (Note: Interest rental based on 6% on cost of reproduction new December 31, 1921. See detailed statement):		
	Maintenance $8,146 86		
	Interest Rental 3,688 37		
	Taxes 64 17		
	Total Railway Operating Expenses, including Railway Tax Accruals and Adjustments		$11,899
		$163,613 77	$24,773

Apportionment of the operating expenses, including Taxes and adjustments (equated) allocated as common to all three zones, to each zone on basis of number of engine hours (exclusive of Union Sulphur Co. engine time) worked in each zone	$1,978.99	$337.44	$261.36	2,577.79
Operating expenses, including Taxes and adjustments, (equated) allocated directly to each zone	506.73	25.15	309.77	841.65
Total operating expenses, including Taxes and adjustments, equated to the test period	$2,485.72	$362.59	$571.13	$3,419.44
Cost per Engine Hour for each zone	$46.6500	$57.7066	$117.3555	$53.0720
Total operating expenses, including taxes and adjustments and Return on value of property held for and used in the service of transportation for the public generally				
Total operating expenses, as above	$2,485.72	$362.59	$571.13	$3,419.44
Return on value of property held for and used in the service of transportation for the public generally	648.28	12.98	118.79	780.05
Total	$3,124.00	$375.57	$689.92	$4,199.49
Cost per Engine Hour, for each zone (including return on value of property, etc.)	$58.8176	$59.7724	$141.7644	$65.1757

(Here follow exhibits marked side folio pages 489-493)

Brunstone Railroad & Canal Company

Statement Showing Analysis of Taxes Reported by the Brunstone Railroad & Canal Company for the Year Ended December 31, 1921, and Amounts Applicable to Operating Expenses

Total taxes as reported to Interstate Commerce Commission			$21,303 80
Operating Taxes:			
State, Parish and Municipal taxes	$10,590 70		
Louisiana State Inspection and Supervision Tax	248 36		
Capital Stock Tax	360 00		
Total		$11,199 06	
Non-operating taxes:			
Income tax	$9,999 96		
State, Parish and Municipal tax on canal	104 74		
Adjustments	04		
Total		$10,104 74	
		$21,303 80	
Operating Taxes assigned as follows:			
Main Line	$4,413 89		
Sidings	135 70		
Equipment	6,649 47		
	$11,199 06		

These taxes divided on basis of assessments as determined from tax bills on file. Taxes assigned to zones on basis of mileage in each zone for main line and sidings; equipment assigned to common zone.

Statement Showing Adjustments in Charges to Operating Expenses of the Brimstone Railroad & Canal Company for the Year Ended December 31, 1921, which Should be Made to Make the Operating Expenses Reflect the Cost of Operation During that Period, These Expenses Having Been Borne by the Union Sulphur Company.

Description of charge			Monthly charge	Annual charge	Classification by I. C. C. accounts	
Additional charge for salary of Mr. S. W. Maxwell for services as President, having direct supervision over operations, purchases, receipts, and disbursement accounts, etc.						
	Now charged	$ 83 22 per mo.				
	Should be	150 00 " "	$66 78	$801 36	Gen'l Exp. Sal. & Exp. G. O.	Acct. #451
Rent for office of the President, including heat, light, janitor service, etc.						
	Now charged	per mo.				
	Should be	$25 00 " "	25 00	300 00	Gen'l Exp. Sal. & Exp. G. O.	Acct. #451
Additional charge for salary of Mr. K. McKerrow for services as Chief Engineer.						
	Now charged	$25 00 per mo.				
	Should be	100 00 "	75 00	900.00	M. of W. & S. Suptce.	Acct. #201
Rent for office of the Chief Engineer, including heat, light, janitor service, etc.						
	Now charged	per mo.				
	Should be	$25 00 " "	25 00	300 00	M. of W. & S. Suptce.	Acct. #201
Additional charge for salary of bookkeeper.						
	Now charged	$20 84 " "				
	Should be	115 00 " "	94 16	1,129 92	Gen'l Exp. S. & E. Clerks & Attds.	Acct. #452
Rent for office of Bookkeeper, including heat, light, janitor service, etc.						
	[illegible]	[illegible] per mo.				

Additional charge for salary of Timekeeper.

Now charged
Should be $50 00 per mo. " "

[fol. 496]

Additional charge for water furnished engines of the Brimstone Railroad & Canal Company, this charge being based on 2 tanks of water per day, 25 days per month at $1 00 per tank.

Now charged
Should be $50 00 per mo. " "

Additional charge for fuel oil furnished the Brimstone Railroad & Canal Company, the charge made by the Union Sulphur Company having been at invoice price to it, plus freight charges, with no charges included for interest on investment in fuel oil facilities, handling costs, etc. This charge based on $.25 per barrel over invoice price plus freight charges, this being basis of quotations now being received by the Union Sulphur Company. It is also estimated this would be the overhead cost to the Brimstone Railroad & Canal Company if it were to install its own fuel oil facilities, furnish its own pumper, etc.

Number of barrels of fuel oil used by the Brimstone Railroad & Canal Company during the year ended December 31, 1921, 4,430 barrels. Additional charge at $.25 per barrel.

Additional charge for rental of engine house, for housing and furnishing steam for steaming up engines of the Brimstone Railroad & Canal Company.

Now charged
Should be $100 00 per mo. " "

Additional charge for services of warehouse man, who handles Brimstone Railroad & Canal Company business passing through warehouse.

Now charged
Should be $40 00 per mo. " "

Additional charge for rent of office of agent of the Brimstone Railroad & Canal Company and for warehouse space.

Now charged $5 00 per mo.
Should be 25 00 " "

Additional charge for labor furnished drying sand used by the Brimstone Railroad & Canal Company engines. Invoice price of sand has been charged to the Brimstone Railroad & Canal Company.

Now charged
Should be $40 80 per mo. " "

[fol. 497] (Cost based on 4 hrs. per day, 40¢ per hour)

Additional charge for transportation services performed by the Union Sulphur Company, with its engines, which service should be performed by the Brimstone Railroad & Canal Company in the conduct of its common carrier service. See statement attached.

Additional charges for proportion of maintenance and repairs, taxes and interest rental on tracks of the Union Sulphur Company used by the Brimstone Railroad & Canal Company in the conduct of its common carrier service. Interest rental based on 6% on cost of reproduction new, December 31, 1921. See statement attached.

Maintenance and repairs	$8,146 86
Interest Rental	3,688 37
Taxes	64 17

12 50	150 00	Gen'l Exps. O. G. O. Supp. & Exps.	Acct. #453	
		M. of W. & S. Supt'ee.	Acct. #201	50%
50 00	600 00	Transp. " "	#371	50%
50 00	600 00	Transp. Water Stations	Acct. #397	
	1,107 50	Transp. Fuel Train Locos.	Acct. #394	
100 00	1,200 00	Transp. E. H. Exps. Train.	Acct. #400	
40 00	480 00	Transp. Sta. Emp. (Lab. at Sta.)	Acct. #373	
20 00	240 00	Transp. Sta. Supp. & Exps.	Acct. #376	
40 80	489 60	Transp. Other Supp. Train Locos.	Acct. #399	
	3,675 55			
		$8,146 86 M. of W. & S. Mtg. Jt. Trks. Y. & O. Fac. Dr.	Acct. #278	
	11,899 40	$3,688 37 Joint Facility Rent	Acct. #541	
		$64 17 Railway Tax Accruals	Acct. #532	
Total	$24,773 33			

Recapitulation

Maintenance of Way and Structures	
#201 Superintendence	$1,500 00
Total Maintenance of Way and Structures	1,500 00
Transportation—Rail Line	
371 Superintendence	300 00
373 Station Employees	480 00
376 Station Supplies and Expenses	240 00
394 Fuel for Train Locomotives	1,107 50
[illegible]	[illegible]

Number of barrels of fuel oil used by the Brimstone Railroad & Canal Company during the year ended December 31, 1921, 4,430 barrels. Additional charge at $.25 per barrel		1,107 50	Transp. Fuel Train Locos.	Acct. #394
Additional charge for rental of engine house, for housing and furnishing steam for steaming up engines of the Brimstone Railroad & Canal Company. Now charged per mo. Should be $100 00 " "	100 00	1,200 00	Transp. E. H. Exps. Train.	Acct. #400
Additional charge for services of warehouse man, who handles Brimstone Railroad & Canal Company business passing through warehouse Now charged per mo. Should be $40 00 " "	40 00	480 00	Transp. Sta. Emp. (Lab. at Sta.)	Acct. #373
Additional charge for rent of office of agent of the Brimstone Railroad & Canal Company and for warehouse space. Now charged $5 00 per mo. Should be 25 00 " "	20 00	240 00	Transp. Sta. Supp. & Exps.	Acct. #376
Additional charge for labor furnished drying sand used by the Brimstone Railroad & Canal Company engines. Invoice price of sand has been charged to the Brimstone Railroad & Canal Company. Now charged per mo. Should be $40 80 " "	40 80	489 60	Transp. Other Supp. Train Locos.	Acct. #399
[fol. 497] (Cost based on 4 hrs. per day, 40¢ per hour) Additional charge for transportation services performed by the Union Sulphur Company, with its engines, which service should be performed by the Brimstone Railroad & Canal Company in the conduct of its common carrier service. See statement attached		3,675 55		
Additional charges for proportion of maintenance and repairs, taxes and interest rental on tracks of the Union Sulphur Company used by the Brimstone Railroad & Canal Company in the conduct of its common carrier service. Interest rental based on 6% on cost of reproduction new, December 31, 1921. See statement attached Maintenance and repairs $8,146 86 Interest Rental 3,688 37 Taxes 64 17		11,899 40	$8,146.86 M. of W. & S. Mtg. Jt. Trks. Y. & O. Fac. Dr. Acct. #278 $3,688.37 Joint Facility Rent Acct. #541 $64.17 Railway Tax Accruals Acct. #532	
Total		$24,773 33		

Recapitulation

Maintenance of Way and Structures	
#201 Superintendence	$1,500 00
Total Maintenance of Way and Structures	1,500 00
Transportation—Rail Line	
371 Superintendence	300 00
373 Station Employees	480 00
376 Station Supplies and Expenses	240 00
394 Fuel for Train Locomotives	1,107 50
397 Water for Train Locomotives	600 00
399 Other Supplies for Train Locomotives	489 60
400 Engine House Expenses—Train	1,200 00
Total Transportation—Rail Line	4,417 10
General R. O. E.	
451 Sal. & Exp.—General Officers	1,101 36
452 Sal. & Exp.—Clerks and Att'ds	1,879 92
453 General Office Supplies & Expenses	300 00
Total General	3,281 28
Transportation service performed by Union Sulphur Co.	3,675 55
Maintenance, Rental & Tax, Union Sulphur Co. permanent tracks	11,899 40
Grand Total	$24,773 33

[fol. 498] I. C. C. Docket No. 12969, Witness —— ——, Exhibit No. —

Brimstone Railroad & Canal Company

Statement Showing Cost of Transportation Service Performed by the Union Sulphur Company for the Brimstone Railroad & Canal Company During the Test Period May 26 to June 1, 1922, and Extended Over a Period of 365 Days on Basis of Average Cost Per Day During Test Period, The Union Sulphur Company Engines Working Sundays as Well as Week Days

Costs, per day, of operating Union Sulphur Company engines, which are chargeable, on engine hour basis, to the Brimstone Railroad & Canal Company, when performing common carrier service which should be performed by the Brimstone Railroad & Canal Company:

Rent of Engine—per day		
Wages of Crew— " "	$10 00	
Fuel Oil 9 barrels per day at $1.22 per barrel	12 34	
Water, sand, oil & waste, per day	10 98	
	1 00	
Cost per day—8 hours		$34 32
Cost per hour		$4 29

Number hours worked by Union Sulphur Company engines during test period, in common carrier service:

	Hrs.	Min.
May 26, 1921	2	08
" 27, 1921	2	37
" 28, 1921		44
" 29, 1921	2	40
" 30, 1921	2	57
" 31, 1921	3	08
June 1, 1921	2	12
Total	16	26

Cost to Brimstone Railroad & Canal Company during the test period at $4.29 per hour	$70 49
Average Cost per day	$10 07
Cost to the Brimstone Railroad & Canal Company for transportation service performed for its account by the Union Sulphur Company for the year 1921, on basis of $10.07 per day	$3,675 55

Brimstone Railroad & Canal Company

Statement showing expenses incurred by the Union Sulphur Company in maintenance and repairs of its permanent tracks, for the year ended December 31, 1921, and the expense applicable to that portion of those tracks which are used by the Brimstone Railroad & Canal Company in its common carrier service; also taxes and interest rental applicable to those tracks, and amount per annum which should be paid by the Brimstone Railroad & Canal Company for the use of the tracks

Cost of Maintenance and repairs of permanent tracks of the Union Sulphur Company for the year ended December 31, 1921:

January 1921	$1,558 87
February "	1,476 44
March "	1,859 25
April "	2,321 76
May "	1,344 11
June "	938 40
July "	1,864 28
August "	1,584 83
September "	1,341 14
October "	1,163 43
November "	2,086 55
December "	1,037 67
Total	$18,576 67

Number of Miles of Union Sulphur Company permanent tracks	8 01 Mi.	
Number of miles of Union Sulphur Company permanent tracks, used by the Brimstone Railroad & Canal Company during the year 1921 in its common carrier service:		
Track A to C (colored blue)	6739′	
" F to G " "	2497′	
" F-1 to H " "	2281′	
" T to U " "	2901′	
" Crossover " "	165′	
	2 76 Mi.	
Tracks B to O (colored green)	4482′	
Track P to Q " "	585′	
" R to S " "	745′	
	1 12 Mi.	
Estimated expense of maintenance and repairs of permanent tracks for the year 1921, used by the Brimstone Railroad & Canal Company in its common carrier services:		
Track A to C (colored blue)	6739′	
" F to G " "	2497′	
" F-1 to H " "	2281′	
" T to U " "	2901′	
" Crossover " "	165′	
	2 76 Mi.	$8,190 39

(Expense of maintenance and repairs of these tracks based on ratio of $1\frac{1}{2}$ to 1 per mile account heavy usage, these tracks being in constant use during working hours in movement of empty cars into and loaded cars

[fol. 500] Estimated expense of maintenance and repairs, etc.:

Tracks B to O (colored green)	4482'		
Track P to Q " "	585'		
" R to S " "	745'		
	1 12 Mi.		$2,215 74

(Expense of Maintenance and repairs of these tracks based on average cost per mile of maintaining and repairing all other permanent tracks after excluding tracks A to C, F to G, F-1 to H, T. to U and crossover track)

Estimated percentage of use of Union Sulphur Company permanent tracks by the Brimstone Railroad & Canal Company during the year 1921, in its common carrier service and the proportion of maintenance and repair expenses which should be borne by the Brimstone Railroad & Canal Company:

	Total maintenance and repair expense	Percentage of use by B. R. R. & C. Co.	Proportion of cost to B. R. R. & C. Co.
Track A to C (colored blue) " F to G " " " F-1 to H " " " T to U " " " Crossover " "	$8,190 39	90%	$7,371 35
Tracks B to O (colored green) Track P to Q " " " R to S " "	$2,215 74	35%	$775 51

(Percentage of use based on general observation of operations and estimates made by operating officials and employees of the Union Sulphur Company and the Brimstone Railroad & Canal Company. Actual use by each company not available.)

Brimstone Railroad & Canal Company's proportion of Maintenance and Repairs	$8,146 86

Interest Rental—Returns to which the Union Sulphur Company is entitled at rate of 6% per annum on the value of its permanent tracks used by the Brimstone Railroad & Canal Company in its common carrier services. Interest rental based on cost of reproduction new, December 31, 1921. (See statement attached.)

	Length in miles	Valuation	Interest rental per annum at 6%
Track A to C (colored blue) " F to G " " " F-1 to H " " " T to U " " " Crossover " "	2 76	$57,994 00	$3,479 64
Tracks B to O " green Track P to Q " " " R to S " "	1 12	$26,509 00	$1,590 54

[fol. 501] Proportion of Interest Rental due the Union Sulphur Company by the Brimstone Railroad & Canal Company on basis of use as explained under maintenance and repairs:

	Interest rental per annum at 6%	B R R C Co. percentage	B R R C Co. proportion
Track A to C (colored blue) " F to G " " " F-1 to H " " " T to U " " " Crossover " "	$3,479 64	90%	$3,131 68

Tracks B to O	"	green		
Track P to Q	"	"	$1,590 54	35%	$556 69
" R to S	"	"			

Brimstone Railroad & Canal Company's proportion of Interest Rental $3,688 37

Taxes.—Proportion of taxes paid by the Union Sulphur Company for the year 1921 on permanent tracks used by the Brimstone Railroad & Canal Company in its common carrier services which is chargeable to that company:

			Estimated taxes paid for year 1921	B. R. R. & C. Co. percentage	B. R. R. & C. Co. proportion
Track A to C	(colored blue)				
" F to G	"	"			
" F-1 to H	"	"	$14 47	90%	$13 02
" T to U	"	"			
" Crossover	"	"			
Tracks B to O	"	green			
Track P to Q	"	"	$10 95	35%	3 82
" R to S	"	"			

Brimstone Railroad & Canal Company's proportion of taxes $64 17

(Taxes based on $20,000.00 per mile assessment value on track A to C (colored blue) and $4,000.00 per mile assessment value for other tracks; tax rate 24.45 mills. Actual taxes paid not available.)

[fol. 502] Brimstone Railroad & Canal Company

Statement Showing Cost of Reproduction New, December 31, 1921, of Property of Union Sulphur Company Used by Brimstone Railroad & Canal Company

[fol. 503] Brimstone Railroad and Canal Company

Statement Showing Cost of Reproduction New, as of December 31, 1921, of Property Owned by the Union Sulphur Company as of December 31, 1921, and Used Jointly with the Brimstone Railroad and Canal Company

(Property Shown in Blue on Map)

I. Road:

Account:

	Amount
1. Engineering	$1,240 00
2. Land for Transportation Purposes	484 00
3. Grading	5,178 00
6. Bridges, Trestles and Culverts	2,038 00
8. Ties	5,029 00
9. Rails	9,481 00
10. Other Track Material	2,068 00
11. Ballast	3,323 00
12. Track Laying and Surfacing	3,383 00
17. Roadway Buildings	100 00
37. Roadway Machines	56 00
38. Roadway—Small Tools	125 00
43. Other Expenditures—Road	138 00
Total Road	$32,713 00
III. General Expenditures:	
71 to 75 and 77—General Expenditures	483 00
76. Interest During Construction	1,501 00
Total General Expenditures	$1,984 00
Cost to Reproduce New the existing property on December 31, 1921 on 1914 price levels	34,697 00
55% increase 1922 over 1914, Unit Cost year, on Accounts #1 to #77, except #2—Land for Transportation Purposes	18,817 00

Cost to Reproduce New, the above, as of December 31, 1921, on the 1922 price levels	53,514 00
Working Capital and Materials and Supplies	4,480 00
Cost to Reproduce New as of December 31, 1921, existing property on December 31, 1921, plus Working Capital and Materials and Supplies	57,994 00

Statement Showing Cost of Reproduction New, Less Depreciation, as of December 31, 1921, of Property Owned by the Union Sulphur Company as of December 31, 1921, and Used Jointly with the Brimstone Railroad and Canal Company

(Property Shown in Blue on Map)

Cost to Reproduce New, as of Decemebr 31, 1921, existing property on December 31, 1921, on the 1922 price levels (see above)	$53,514 00
Cost to Reproduce New, as of December 31, 1921, existing property on December 31, 1921, on the 1922 price levels, less depreciation (34%)	35,319 00
Working Capital and Materials and Supplies	4,480 00
Cost to Reproduce New as of December 31, 1921, less depreciation, existing property on December 31, 1921, plus Working Capital and Materials and Supplies	$39,799 00

Statement of Property Owned by the Union Sulphur Company and Used Jointly with the Brimstone Railroad & Canal Company

(Shown in Blue on Map)

Detail

2.761 Miles

I. Road

Account	Unit	Value	No. units	Total
1. Engineering				
4% on Accounts 3 to 43 Inclusive				$1,240.00
2. Land for Transportation Purposes				
Right of Way	Ac.	$35.00	13.83	484.00
3. Grading				
Embankment—Roadway	Cu. Yds.	.16	26,417	4,227.00
Excavation—Ditches	" "	.16	1,617	259.00
Clearing and grubbing	Ac.	50.00	13.83	692.00
				5,178.00

6. Bridges, Trestles and Culverts				
Concrete—Reinforced	Cu. Yds.	14.50	82	1,204.00
" —Plain	" "	12.45	30	373.00
Timber boxes—Heart Pine	M. B. M.	16.50	1.2	20.00
W. I. Pipe 10" S. H.	L. Ft.	.76	420	319.00
" " 20" "	"	1.63	60	98.00
Excavation	Cu. Yds.	.16	150	24.00
				2,038.00
8. Ties				
White Oak	Ea.	.69	3,518	2,427.00
Pine	"	.44	5,277	2,322.00
Heart Pine—Switch	M. B. M.	16.50	21.2	350.00
				5,099.00
[fol. 505] 9. Rails				
Bessemer—80#	G. T.	34.80	69.00	
" —60#	"	34.80	143.70	
" —50#	"	34.80	56.43	9,393.00
Taper Rails 8' 3" 80.60	r.	18.00	3	54.00
" " 8' 3" 60.50	"	17.00	2	34.00
				9,481.00

Statement of Property Owned, etc.—Continued

	Unit	Value	No. units	Total
10. Other Track Material				
Spikes 5½" x 9/16	Cwt.	2.43	189.0	459.00
Bolts	"	2.43	41.2	100.00
Angle Bars	"	1.90	408	775.00
Tie Plates	"	1.89	13.2	25.00
Rail Braces	Ea.	.12	200	24.00
Switch—Complete 15° 80#	"	39.00	3	117.00
" " 15° 60#	"	32.16	5	161.00
Frogs 80# 11° #7 Rigid	"	36.00	3	108.00
" 60# 7° #7 "	"	28.39	5	142.00
Guard Rails Complete 80#	Pair	13.00	3	39.00
" " " 60#	"	12.39	5	62.00
Ground Throw Switch Stands	Ea.	7.00	8	56.00
				2,068.00
11. Ballast				
Shell	Cu. Yds.	2.00	1563	3,126.00
Brick Bats	" "	.60	329	197.00
				3,323.00

12. Track Laying and Surfacing				
Track Laying and Surfacing	Mile	1,020.00	2.76	2,815.00
Applying ballast	Cu. Yds.	.30	1892	568.00
				3,383.00
17. Roadway Buildings				
Tool House	Each	100.00	1	100.00
37. Roadway Machines				
Push Car	Each	21.00	1	21.00
Hand "	"	35.00	1	35.00
				56.00
38. Roadway Small Tools				
Tools	Set	125.00	1	125.00
43. Other Expenditures—Road				
Miscellaneous	Mile	50.00	2.76	138.00
Total Road				$32,713.00

	Unit	Value	No. units	Total
[fol. 506] III. General Expenditures Account				
71 to 75 and 77—General Expenditures 1½% on Accounts 1 and 3 to 43				$483.00
76. Interest During Construction 6% for 9 months, one-half the construction period plus 3 months, on accounts 1 to 43, except 2, on accounts 71 to 75 and 77 and 6% for 12 months on account 2				$1,501.00
Total General Expenditures				1,984.00
" Accounts 1 to 77				34,697.00

[fol. 507] Brimstone Railroad and Canal Company

Statement Showing Cost of Reproduction New, as of December 31, 1921, of Property Owned by the Union Sulphur Company as of December 31, 1921 and Used Jointly with the Brimstone Railroad and Canal Company.

(Property Shown in Green on Map)

I. Road:

Account:	Amount
1. Engineering	$575 00
2. Land for Transportation Purposes	101 00
3. Grading	2,774 00
6. Bridges, Trestles and Culverts	496 00
8. Ties	2,477 00
9. Rails	3,787 00
10. Other Track Material	1,365 00
11. Ballast	1,936 00
12. Track Laying and Surfacing	1,486 00
43. Other Expenditures—Road	56 00
Total Road	$15,053 00

III. General Expenditures:

71 to 75 and 77—General Expenditures	224 00
76. Interest During Construction	689 00
Total General Expenditures	$913 00

Cost to Reproduce New the existing property on December 31, 1921, on 1914 price levels	15,966 00
55% increase 1922 over 1914, Unit Cost year, on Accounts #1 to #77, except #2—Land for Transportation Purposes	8,726 00
Cost to reproduce New, the above, as of December 31, 1921, on the 1922 price levels	24,692 00
Working Capital and Materials and Supplies	1,817 00
Cost to Reproduce New as of December 31, 1921, existing property of December 31, 1921, plus Working Capital and Materials and Supplies	26,509 00

Statement Showing Cost of Reproduction New, Less Depreciation, as of December 31, 1921, of Property Owned by the Union Sulphur Company as of December 31, 1921, and Used Jointly with the Brimstone Railroad and Canal Company.

(Property Shown in Green on Map)

Cost to Reproduce New, as of December 31, 1921, existing property on December 31, 1921, on the 1922 price levels (see above)	24,692 00
Cost to Reproduce New, as of December 31, 1921, existing property on December 31, 1921, on the 1922 price levels, less Depreciation (34%)	16,297 00
Working Capital and Materials and Supplies	1,817 00
Cost to Reproduce New, as of December 31, 1921, less Depreciation, existing property on December 31, 1921, plus Working Capital and Materials and Supplies	18,114 00

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible]

No. 949

[illegible] RAILROAD & CANAL COMPANY,
APPELLANT,

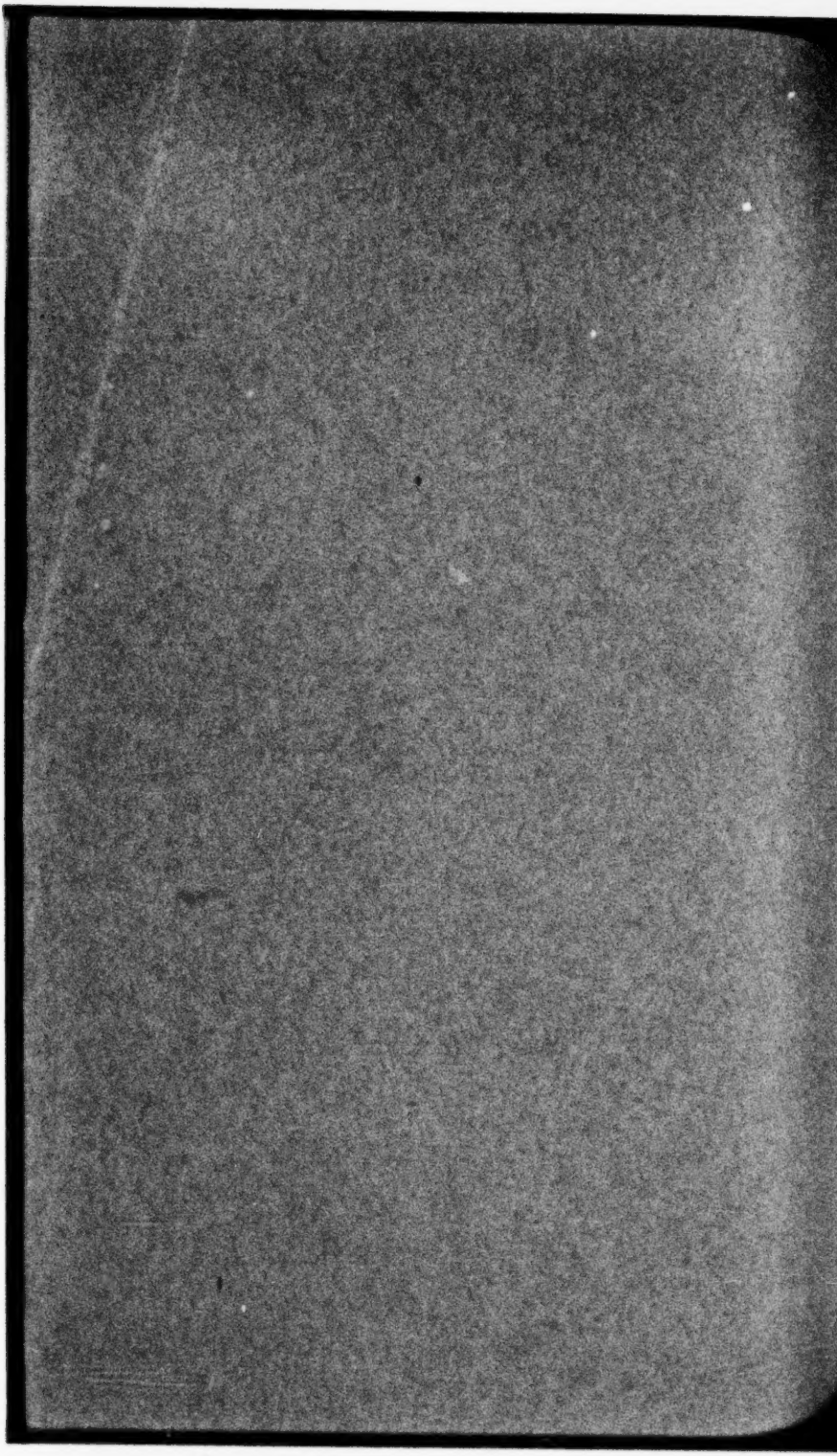
vs.

THE UNITED STATES OF AMERICA, LOUISIANA
WESTERN RAILROAD COMPANY, KANSAS CITY
SOUTHERN RAILWAY COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF LOUISIANA

FILED MAY 4, 19[illegible]

(32,575)



(32,675)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 240

BRIMSTONE RAILROAD & CANAL COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, KANSAS CITY SOUTHERN RAILWAY COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA

VOLUME II

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 28, 1927

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Statement of Property Owned by the Union Sulphur Company and Used Jointly with the Brimstone Railroad & Canal Company

(Shown in Green on Map)

Detail

1.12 Miles

	Unit	Value	No. units	Total
I. Road:				
Account:				
1. Engineering 4% on Accounts 3 to 43 Inclusive				$575 00
2. Land for Transportation Purposes Right of Way	Ac.	$35 00	2 89	101 00
3. Grading:				
Embankment—Roadway	Cu. Yds.	16	15,772	2,524 00
Excavation—Ditches	" "	16	656	105 00
Clearing and Grubbing	Ac.	50 00	2 89	145 00
				2,774 00

	Unit	Value	No. units	Total
6. Bridges, Trestles and Culverts:				
Timber Boxes—Heart Pine	M. B. M.	16 50	2 4	40 00
Corrugated Iron Pipe 36"	L. Ft.	3 07	40	123 00
" " " 20"	"	1 70	40	68 00
Wrought " " 10" S. H.	"	76	220	167 00
" " " 20" S. H.	"	1 63	55	90 00
Excavation	Cu. Yds.	16	50	8 00
				496 00
8. Ties:				
White Oak	En.	69	1,542	1,064 00
Pine	"	44	2,316	1,019 00
Heart Pine—Switch.	M. B. M.	16 50	23 9	394 00
				2,477 00
9. Rails:				
Bessemer—90"	G. T.	34 90	1 74	..
" —60"	"	34 90	106 24	3,769 00
Taper Rail—90—60	Pr.	18 00	1	18 00
				3,787 00

10. Other Track Material:

Spikes	Cwt.	$2 43	78	$190 00
Bolts	"	2 43	17	41 00
Angle Bars	"	1 90	171	324 00
Switch—Complete 15' 90#	Ea.	39 00	1	39 00
" " 15' 60#	"	32 16	9	289 00
Frog—90# 11' #7 Rigid	"	36 00	1	36 00
" —60# 7' #7 "	"	28 30	9	255 00
Guard Rails—Complete 90#	Pr.	13 00	1	13 00
" " " 60#	"	12 00	9	108 00
Ground Throw Switch Stands	Ea.	7 00	10	70 00
				$1,365 00

11. Ballast:

Shell	Cu. Yds.	2 00	891	1,782 00
Brick Bats	"	60	256	154 00
				1,936 00

12. Track Laying and Surfacing:

Track Laying & Surfacing	Mile	1,020 00	1 12	1,142 00
Applying Ballast	Cu Yds.	36	1,147	344 00
				1,486 00

Statement of Property Owned, etc.—Continued

	Unit	Value	No. units	Total
43. Other Expenditures—Road—Miscellaneous	Mi.	50 00	1 12	56 00
Total Road				$15,053 00
III. General Expenditures:				
Account:				
71 to 75 and 77—General Expenditures—1½% on Accounts 1 and 3 to 43				224 00
76. Interest During Construction—6% for 9 months, one-half the construction period plus 3 months, on Accounts 1 to 43, except 2, on accounts 71 to 75 and 77 and 6% for 12 months on Account.				689 00
Total General Expenditures				$913 00
" Accounts 1 to 77				$15,966 00

Statement Showing Amount of Return on Investment to which Brimstone Railroad & Canal Company is Entitled on Basis of Cost of Reproduction New, December 31, 1921

[fol. 510] I. C. C. Docket, No. 12969; Witness, —— ——; Exhibit No. —

Brimstone Railroad & Canal Company

Statement showing amount of return to which the Brimstone Railroad & Canal Company is entitled upon the property held for and used in the service of transportation for the public generally, based on a rate of six (6) per cent per annum on cost of reproduction new of the property as of December 31, 1921, subdivided as between zones and equated to the test period May 26 to June 1, 1922, inclusive. (See valuation statement attached)

Zone	Valuation	Rate of return	Amount of return per annum	Amount of return per annum equated to the test period
Common	$563,383 10	6%	$33,802 99	$648 28
Southern Pacific	11,280 04	6%	676 80	12 98
Kansas City Southern	103,237 36	6%	6,194 24	118 79
Total	$677,900 50	6%	$40,674 03	$780 05

Brimstone Railroad and Canal Company

Statement, by Zones, Showing Cost of Reproduction New as of December 31, 1921

Account	Zones			Total
	K C S	Sou Pac	Common	
I. Roads:				
1 Engineering	$2,095 75	$152 14	$1,410 11	$3,658 00
2 Land for Transportation Purposes	6,246 45	234 50	441 05	6,922 00
3 Grading	11,429 42	852 30	3,859 28	16,141 00
6 Bridges, Trestles, and Culverts	3,794 40	103 76	693 84	4,592 00
8 Ties	11,826 17	836 08	5,070 75	17,733 00
9 Rails	15,237 50	874 50	7,775 00	23,887 00
10 Other Track Material	2,392 90	193 80	1,411 30	3,998 00
11 Ballast	1,174 64	454 96	6,185 40	7,815 00
12 Track Laying and Surfacing	5,763 00	425 00	3,533 00	9,721 00
13 Right of Way Fences	....	....	48 00	48 00
15 Crossings and Signs	560 63	....	987 37	1,548 00
16 Stations and Office Buildings	....	50 00	4,600 00	4,650 00
17 Roadway Buildings	....	....	300 00	300 00
37 " Machines	....	....	606 00	606 00
38 " Small Tools	....	....	125 00	125 00
43 Other Expenditures—Road	305 00	13 00	50 00	368 00
Total Road	$60,735 86	$4,190 04	$37,096 10	$102,022 00

II. Equipment:				
51 Steam Locomotives			$32,046 00	$32,046 00
53 Freight Train Cars			124,155 00	124,155 00
Total Equipment			$156,201 00	$156,201 00
III. General Expenditures:				
71 to 75 and 77—General Expenditures	$817 00	$60 00	$550 00	$1,427 00
76 Interest during Construction	2,864 00	195 00	4,043 00	7,102 00
Total General Expenditures	$3,681 00	$255 00	$4,593 00	$8,529 00
Cost to reproduce new, the existing property on June 30, 1918, on the 1914 price level	$64,416 86	$4,445 04	$197,890 10	$266,752 00
55% increase, 1922 over 1914, Unit Cost Year, on Accts. #1 to #77 except #2 Land for Transp. purposes	$31,993 50	2,316 00	108,597 00	142,906 50

Statement, by Zones, Showing Cost of Reproduction New, etc.—Continued

Account	Zones			Total
	K. C. S.	Sou. Pac.	Common	
Cost to reproduce new, the above as of December 31, 1921, on the 1922 price levels	$96,410 36	$6,761 04	$306,487 10	$409,658 50
Additions and Betterments to December 31, 1921	6,827 00	4,519 00	220,590 00	231,936 00
Working Capital	..	.....	31,639 00	31,639 00
Materials and Supplies	....	....	4,667 00	4,667 00
Cost to reproduce new, as of December 31, 1921, property existing on June 30, 1918, plus Additions and Betterments, Working Capital and Materials and Supplies	$103,237 36	$11,280 04	$563,383 10	$677,900 50

Statement, by Zones, Showing Cost of Reproduction New, Less Depreciation as of December, 31, 1921

Cost to reproduce New, the existing property on June 30, 1919 on the 1922 price level (see above)	$96,410 36	$6,761 04	$306,487 10	$409,658 50

Cost to reproduce New, the existing property on June 30, 1918 on the 1922 price level, less depreciation 34%	$63,630 84	$4,462 28	$202,281 49	$270,374 61
Additions and Betterments to December 31, 1921	6,827 00	4,519 00	220,590 00	231,936 00
Working Capital			31,639 00	31,639 00
Materials and Supplies			4,667 00	4,667 00
Cost to reproduce New as of December 31, 1921 less Depreciation, property existing on June 30, 1918, plus Additions and Betterments, Working Capital and Materials and Supplies	$70,457 84	$8,981 28	$459,177 49	$538,616 61

[fol. 512] Brimstone Railroad & Canal Company

Authority for using 55% in arriving at increased prices for year 1922 over year 1914, the unit cost year, is based on general knowledge of prices existing at the present date and aside from this general knowledge, it is supported in part by statistical report put out by the Bureau of Statistics of the Labor Department at Washington to the effect that commodity prices are approximately 55% over pre-war prices and experience has shown the general commodity trends are approximately the same as price trends when using railway materials only.

It is difficult to say whether the percentage of 55% as used will remain constant over a period of months or years to come. However, in the commodity trend referred to above, it shows that the monthly fluctuations for the current year are now about eight or ten per cent above where they were some four or five months earlier in the year. Newspaper reports also show a trend of constantly increasing price levels for the past several months. Price of rails has recently been increased $5.00 per ton, bringing the price of that commodity to approximately 55% over pre-war cost, and steel mills are reporting shortage in labor and in some instances increases in wages, indicating a further increase in prices of iron and steel commodities. Considering conditions in general as they exist at the present time, it would seem safe to say that the increase of 55% over 1914 prices, as used, is conservative and that there are no indications of a decrease in present price levels in the immediate future.

(Here follow side folio pages 513, 514, 515)

[fol. 516] Brimstone Railroad & Canal Company

Statement Showing Engine Hour Costs on Basis of Return on Investment on Cost of Reproduction New, Less Depreciation, December 31, 1921

[fol. 517] I. C. C. Docket No. 12969, Witness ——— ———, Exhibit No. —

Brimstone Railroad & Canal Company

Statement showing the number of engine hours worked during the test period May 26 to June 1, 1922 inclusive, the allocation of operating expenses, including taxes, adjustments and return on value on basis of cost of reproduction new, less depreciation, December 31, 1921, of property held for and used in the service of transportation for the public generally, for the year ended December 31, 1921 equated to the test period, to the three zones into which the Brimstone Railroad & Canal Company was divided for the purpose of the cost study, and the cost per engine hour in each zone.

	Common zone time		Son. Pac. zone time		K. C. S. zone time		Total time	
	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.
Number of Engine Hours worked during test period:		2211		377		292		2880
Brimstone Railroad & Canal Company Engine Union Sulphur Company engines in performance of common carrier service		986						986
Total	53	17	6	17	4	52	64	26

Statement Showing Engine Hour Costs, etc.—Continued

	Common zone time		Sou. Pac. zone time		K. C. S. zone time		Total time	
	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.
Operating expenses, including Taxes and Adjustments (equated) allocated as common to all three zones							$2,577.79	
Cost per engine hour (exclusive of Union Sulphur Co. engine time) of the expenses allocated as common to all three zones							53.704	
Apportionment of the operating expenses, including Taxes and adjustments (equated) allocated as common to all three zones, to each zone on basis of number of engine hours (exclusive of Union Sulphur Co. engine time) worked in each zone	$1,978.99		$337.44		$261.36		2,577.79	
Operating expenses, including Taxes and adjustments, (equated) allocated directly to each zone	484.51		25.15		309.77		819.43	
Total operating expenses, including Taxes and adjustments, equated to the test period	$2,463.50		$362.59		$571.13		$3,397.22	
Cost per Engine Hour for each zone	$	46.2340	$	57.7066	$117.3555		$	52.7264

[fol. 518] Brimstone Railroad & Canal Company

Statement Showing Results of Time Study in Number of Cars Handled and Engine Time Consumed During Test Period

[fol. 519] I. C. C. Docket, No. 12969; Witness, —— ——; Exhibit No. —

Brimstone Railroad & Canal Company

Statement Showing by Days and by Zones the Number of Loaded Cars Handled by the Brimstone Railroad & Canal Company May 26 to June 1, 1922, inclusive, the Number of Minutes Required of Engines to Handle the Cars in Each Zone and the Average Number of Minutes per Car, per Zone, Consumed in Handling a Car

Zone	Date																
	May 26		May 27		May 28		May 29		May 30		May 31		June 1		Total		Average minutes per car
	Cars	Min	Cars	Min	Cars	Min	Cars	Min	Cars	Min	Cars	Min	Cars	Min	Cars	Min	
Common Zone																	
Brimstone Railroad Company																	
Engines	89	348	85	353			84	355	77	419	88	332	64	404	487	2211	
Union Sulphur Company Engines																	
in common carrier service		128		157		44		160		177		188		132		986	
Total Common Zone	89	476	85	510		44	84	515	77	596	88	520	64	536	487	3197	6.5647
Southern Pacific Zone	79	64	83	68			66	64	77	61	78	44	64	76	447	377	.8434
Kansas City Southern Zone	10	68	2	59			18	61			10	104			40	292	7.3000
Total	89	608	85	637		44	84	640	77	657	88	668	64	612	487	3866	7.9384

Total operating expenses, including Taxes and adjustments and Return on value of property held for and used in the service of transportation for the public generally				
Total operating expenses, as above	$2,463.50	$362.59	$571.13	$3,397.22
Return on value of property held for and used in the service of transportation for the public generally	528.37	10.33	81.07	619.77
Total	$2,991.37	$372.92	$652.20	$4,016.99
Cost per Engine Hour, for each zone (including return on value of property, etc.)	$ 56.1502	$ 59.3507	$134.0136	$ 62.3434

(Here follow side folio pages 518-522)

[fol. 523] I. C. C. Docket, No. 12969; Witness, —— ——: Exhibit No. —

Brimstone Railroad & Canal Company

Statement Showing Analysis of Taxes Reported by the Brimstone Railroad & Canal Company for the Year Ended December 31, 1921, and Amounts Applicable to Operating Expenses

Total taxes as reported to Interstate Commerce Commission:		$21,303 80
Operating Taxes:		
State, Parish and Municipal taxes	$10,590 70	
Louisiana State Inspection and Supervision Tax	248 36	
Captial Stock Tax	360 00	
Total		$11,199 06
Non-operating taxes:		
Income tax	$9,999 96	
State, Parish and Municipal tax on canal	104 74	
Adjustments	04	
Total		$10,104 74
		$21,303 80
Operating Taxes assigned as follows:		
Main Line	$4,413 89	
Sidings	135 70	
Equipment	6,649 47	
	$11,199 06	

These taxes divided on basis of assessment as determined from tax bills on file. Taxes assigned to zones on basis of mileage in each zone for main line and sidings; equipment assigned to common zone.

Brimstone Railroad & Canal Company

Statement showing adjustments in charges to operating expenses of the Brimstone Railroad & Canal Company for the year ended December 31, 1921, which should be made to make the operating expenses reflect the cost of operation during that period, these expenses having been borne by the Union Sulphur Company.

Description of charge		Monthly charge	Annual charge	Classification by I. C. C. accounts
Additional charge for salary of Mr. S. W. Maxwell for services as President, having direct supervision over operations, purchases, receipts and disbursement accounts, etc.				
Now charged	$83 22 per mo.			
Should be	$150 00 "			
		$66 78	$801 36	Gen'l Exp. Sal. & Exp. G. O. Acct. #451.
Rent for office of the President, including heat, light, janitor service, etc.				
Now charged	$ per mo.			
Should be	$25 00 "			
		25 00	300 00	Gen'l Exp. Sal. & Exp. G. O. Acct. #451.

Statement Showing Adjustments in Charges to Operating Expenses, etc.—Continued

Description of charge	Monthly charge	Annual charge	Classification by I. C. C. accounts
Additional charge for salary of Mr. K. McKerrow for services as Chief Engineer. Now charged $25 00 per mo. Should be $100 00 "	75 00	900 00	M. of W. & S. Suptce. Acct. #201.
Rent for office of the Chief Engineer, including heat, light, janitor service, etc. Now charged $ per mo. Should be $25 00 "	25 00	300 00	M. of W. & S. Suptce. Acct. #201.
Additional charge for salary of Bookkeeper. Now charged $20 84 per mo. Should be $115 00 "	94 16	1,129 92	Gen'l Exp. S. & E. Clerks & Attds. Acct. #452.
Rent for office of Bookkeeper, including heat, light, janitor service, etc. Now charged $ per mo. Should be $12 50 "	12 50	150 00	Gen'l Exp. O. G. O. Supp. & Exp. Acct. #453.

Additional charge for salary of Stenographer. Now charged $ per mo. Should be $62 50 "	62 50	750 00	Gen'l Exps. S. & E. Clerks & Attds. Acct. #452.
Rent for office of stenographer, including heat, light, janitor service, etc. Now charged $ per mo. Should be $12 50 "	12 50	150 00	Gen'l Exps. O. G. O. Supp. & Exps. Acct. #453.
Additional charge for salary of Timekeeper. Now charged $ per mo. Should be $50 00 "	50 00	600 00	M. of W. & S. Suptce. Acct. #201 50%. Transp. Suptce. Acct. #371 50%.
[fol. 525] Additional charge for water furnished engines of the Brimstone Railroad & Canal Company, this charge being based on 2 tanks of water per day, 25 days per month at $1.00 per tank. Now charged $ per mo. Should be $50 00 "	50 00	600 00	Transp. Water Stations Acct. #397.

Statement Showing Adjustments in Charges to Operating Expenses, etc.—Continued

Description of charge	Monthly charge	Annual charge	Classification by I. C. C. accounts
Additional charge for fuel oil furnished the Brimstone Railroad & Canal Company, the charge made by the Union Sulphur Company having been at invoice price to it, plus freight charges, with no charges included for interest on investment in fuel oil facilities, handling costs, etc. This charge based on $.25 per barrel over invoice price plus freight charges, this being basis of quotations now being received by the Union Sulphur Company. It is also estimated this would be the overhead cost to the Brimstone Railroad & Canal Company if it were to install its own fuel oil facilities, furnish its own pumper, etc.			
Number of barrels of fuel oil used by the Brimstone Railroad & Canal Company during the year ended December 31, 1921, 4,430 Barrels.			
Additional charge at $.25 per barrel		1,107 50	Transp. Fuel Train Locos Acct. #394.
Additional charge for rental of engine house, for housing and furnishing steam for steam-			

ing up engines of the Brimstone Railroad & Canal Company. Now charged $ per mo. Should be $100 00 "			
	100 00	1,200 00	Transp. E. H. Exps. Train Acct. #400.
Additional charge for services of warehouse man, who handles Brimstone Railroad & Canal Company business passing through warehouse. Now charged $ per mo. Should be $40 00 "			
	40 00	480 00	Transp. Sta. Exp. (Lab. at Sta.) Acct. #373.
Additional charge for rent of office of agent of the Brimstone Railroad & Canal Company and for warehouse space. Now charged $5 00 per mo. Should be $25 00 "			
	20 00	240 00	Transp. Sta. Supp. & Exps. Acct. #376.

Statement Showing Adjustments in Charges to Operating Expenses, etc.—Continued

Description of charge	Monthly charge	Annual charge	Classification by I. C. C. accounts
Additional charge for labor furnished drying sand used by the Brimstone Railroad & Canal Company engines. Invoice price of sand has been charged to the Brimstone Railroad & Canal Company. Now charged $ per mo. Should be $40 80 "			
	40 80	489 60	Transp. Other Supp. Train Locos Acct. #399.
(Cost based on 4 hrs. per day; 40c per hour.)			
[fol. 526] Additional charge for transportation services performed by the Union Sulphur Company, with its engines, which service should be performed by the Brimstone Railroad & Canal Company in the conduct of its common carrier service. See statement attached		3,675 55	
Additional charges for proportion of maintenance and repairs, taxes and interest rental on tracks of the Union Sulphur Company used by the Brimstone Railroad & Canal Company in the conduct of its common car-			

rier service. See statement attached. Interest rental based on 6% on cost of reproduction new, less depreciation, December 31, 1921.			
Maintenance and repairs	$8,146 86		$8,146.86 M. of W. & S. Mtg. Jt. Trks. Y. & O. Fac. Dr. Acct. #278.
Interest Rental	2,529 54		
Taxes	64 17	10,740 57	$2,529.54 Joint Facility Rent Acct. #541. $64.17 Railway Tax Accruals Acct. #532.
Total		23,614 50	
Recapitulation			
Maintenance of Way and Structures:			
#201. Superintendence		1,500 00	
Total Maintenance of Way and Structures		1,500 00	
Transportation—Rail Line:			
371. Superintendence		300 00	
373. Station Employees		480 00	
376. Station Supplies and Expenses		240 00	
394. Fuel for Train Locomotives		1,107 50	

Statement Showing Adjustments in Charges to Operating Expenses, etc.—Continued

Description of charge	Monthly charge	Annual charge	Classification by I. C. C. accounts
397. Water for Train Locomotives		600 00	
399. Other Supplies for Train Locomotives		480 00	
400. Engine House Expenses—Train		1,200 00	
Total Transportation—Rail Line		4,417 10	
General R. O. E.:			
451. Sal. & Exp.—General Officers		1,101 36	
452. Sal. & Exp.—Clerks and Att'ds		1,879 92	
453. General Office Supplies & Expenses		300 00	
Total General		3,281 28	
Transportation service performed by Union Sulphur Co		3,675 55	
Maintenance, Rental & Tax, Union Sulphur Co. permanent tracks		10,740 57	
Grand Total		$23,614 50	

[fol. 527] I. C. C. Docket No. 12969, Witness ————, Exhibit No. —

Brimstone Railroad & Canal Company

Statement Showing Cost of Transportation Service Performed by the Union Sulphur Company for the Brimstone Railroad & Canal Company During the Test Period, May 26, to June 1, 1922, and Extended Over a Period of 365 Days on Basis of Average Cost Per Day During Test Period, the Union Sulphur Company Engines Working Sundays as Well as Week Days

Costs, per day, of operating Union Sulphur Company engines, which are chargeable, on engine hour basis, to the Brimstone Railroad & Canal Company, when performing common carrier service which should be performed by the Brimstone Railroad & Canal Company:

Rent of Engine—per day	$10 00	
Wages of Crew—" "	12 34	
Fuel Oil 9 barrels per day at $1.22 per barrel	10 98	
Water, sand, oil & waste, per day	1 00	
Cost per day—8 hours		$34 32
Cost per hour		$4 29

Statement Showing Cost of Transportation Service Performed, etc.—Continued

Number hours worked by Union Sulphur Company engines during test period, in common carrier service:

	Hrs.	Min.
May 26, 1921	2	08
" 27, 1921	2	37
" 28, 1921		44
" 29, 1921	2	40
" 30, 1921	2	57
" 31, 1921	3	08
June 1, 1921	2	12
Total	16	26

Cost to Brimstone Railroad & Canal Company during the test period at $4.29 per hour	$70	49
Average Cost per day	$10	07
Cost to the Brimstone Railroad & Canal Company for transportation service performed for its account by the Union Sulphur Company for the year 1921, on basis of $10.07 per day	$3,675	55

Brimstone Railroad & Canal Company

Statement showing expenses incurred by the Union Sulphur Company in maintenance and repairs of its permanent tracks, for the year ended December 31, 1921, and the expense applicable to that portion of those tracks which are used by the Brimstone Railroad & Canal Company in its common carrier service; also taxes and interest rental applicable to those tracks, and amount per annum which should be paid by the Brimstone Railroad & Canal Company for the use of the tracks

Cost of Maintenance and repairs of permanent tracks of the Union Sulphur Company for the year ended December 31, 1921:

January	1921	
February	"	$1,558 87
March	"	1,476 44
April	"	1,859 25
May	"	2,321 70
June	"	1,344 11
July	"	938 40
August	"	1,864 28
September	"	1,584 83
October	"	1,341 14
November	"	1,163 43
December	"	2,086 55
		1,037 67
Total		$18,576 67

Number of Miles of Union Sulphur Company permanent tracks 8 01 Mi.

Statement Showing Expenses Incurred by the Union Sulphur Company, etc.—Continued

Number of miles of Union Sulphur Company permanent tracks, used by the Brimstone Railroad & Canal Company during the year 1921 in its common carrier service:			
Track A to C (colored blue)	6739′		
" F to G " "	2497′		
" F-1 to H " "	2281′		
" T to U " "	2901′		
" Crossover " "	165′		
		2 76 Mi.	
Tracks B to O (colored green)	4482′		
Track P to Q " "	585′		
" R to S " "	745′		
		1 12 Mi.	
Estimated expense of maintenance and repairs of permanent tracks for the year 1921, used by the Brimstone Railroad & Canal Company in its common carrier services:			
Track A to C (colored blue)	6739′		
" F to G " "	2497′		
" F-1 to H " "	2281′		
" T to U " "	2901′		
" Crossover " "	165′		
		2 76 Mi.	$8,190 39

(Expense of maintenance and repairs of these tracks based on ratio of $1\frac{1}{2}$ to 1 per mile account heavy usage, these tracks being in constant use during working hours in movement of empty cars into and loaded cars

out of sulphur bins; also movement of fuel oil to storage tanks. Actual expense of maintenance and repairs of these tracks not available from Union Sulphur Company records.)

[fol. 529] Estimated expense of maintenance and repairs, etc.:

Tracks B to O (colored green)			
Track P to Q	"	"	448.2'
" R to S	"	"	585'
			745'
			1.72 Mi. $2,215 74

(Expense of Maintenance and repairs of these tracks based on average cost per mile of maintaining and repairing all other permanent tracks after excluding tracks A to C, F to G, F-1 to H, T. to U and crossover track)

Estimated percentage of use of Union Sulphur Company permanent tracks by the Brimstone Railroad & Canal Company during the year 1921, in its common carrier service and the proportion of maintenance and repair expenses which should be borne by the Brimstone Railroad & Canal Company:

	Total maintenance and repair expense	Percentage of use by B. R. R. & C. Co.	Proportion of cost to B. R. R. & C. Co.
Track A to C (colored blue) " F to G " " " F-1 to H " " " T to U " " " Crossover " "	$8,190 39	90%	$7,371 35
Tracks B to O (colored green) Track P to Q " " " R to S " "	$2,215 74	35%	$775 51

Statement Showing Expenses Incurred by the Union Sulphur Company, etc.—Continued

(Percentage of use based on general observation of operations and estimates made by operating officials and employees of the Union Sulphur Company and the Brimstone Railroad & Canal Company. Actual use by each company not available.)

Brimstone Railroad & Canal Company's proportion of Maintenance and Repairs	$8,146 86

Interest Rental—Returns to which the Union Sulphur Company is entitled at rate of 6% per annum on the value of its permanent tracks used by the Brimstone Railroad & Canal Company in its common carrier services. Interest rental based on cost of reproduction now, less Depreciation December 31, 1921. (See statement attached.)

	Length in miles	Valuation	Interest rental per annum at 6%
Track A to C (colored blue)			
" F to G " "			
" F 1 to H " "	2 76	$39,709 00	$2,387 94
" T to U " "			
" Crossover " "			
Tracks B to O " green			
Track P to Q " "	1 12	$18,114 00	$1,086 84
" R to S " "			

[fol. 530] Proportion of Interest Rental due the Union Sulphur Company by the Brimstone Railroad & Canal Company on basis of use as explained under maintenance and repairs:

	Interest rental per annum at 6%	B R R & C Co. percentage	B R R & C Co. proportion
Track A to C (colored blue)			
" F to G " "			
" F 1 to H " "	$2,387 94	90%	$2,149 15
" T to U " "			
" Crossover " "			

Tracks B to O " green Track P to Q " " " R to S " "	$1,086 84	35%	$380 39
Brimstone Railroad & Canal Company's proportion of Interest Rental			$2,529 54

Taxes.—Proportion of taxes paid by the Union Sulphur Company for the year 1921 on permanent tracks used by the Brimstone Railroad & Canal Company in its common carrier services which is chargeable to that company:

	Estimated taxes paid for year 1921	B. R. R. & C. Co. percentage	B. R. R. & C. Co. proportion
Track A to C (colored blue) " F to G " " " F 1 to H " " " T to U " " " Crossover " "	$52 59 $14 47	90% 90%	$47 33 $13 02
Tracks B to O " green Track P to Q " " " R to S " "	$10 95	35%	3 82
Brimstone Railroad & Canal Company's proportion of taxes			$64 17

(Taxes based on $20,000.00 per mile assessment value on track A to C (colored blue) and $4,000.00 per mile assessment value for other tracks; tax rate 24.45 mills. Actual taxes paid not available.)

[fol. 531] Brimstone Railroad & Canal Company

Statement Showing Cost of Reproduction New, Less Depreciation December 31, 1921, of Property of Union Sulphur Company Used by Brimstone Railroad & Canal Company

[fol. 532] Brimstone Railroad and Canal Company

Statement Showing Cost of Reproduction New, as of December 31, 1921, of Property Owned by The Union Sulphur Company as of December 31, 1921, and Used Jointly With The Brimstone Railroad and Canal Company

(Property Shown in Blue on Map)

I. Road:

Account:	Amount
1. Engineering	$1,240 00
2. Land for Transportation Purposes	484 00
3. Grading	5,178 00
6. Bridges, Trestles and Culverts	2,038 00
8. Ties	5,099 00
9. Rails	9,481 00
10. Other Track Material	2,068 00
11. Ballast	3,323 00
12. Track Laying and Surfacing	3,383 00
17. Roadway Buildings	100 00
37. Roadway Machines	56 00
38. Roadway—Small Tools	125 00
43. Other Expenditures—Road	138 00
Total Road	$32,713 00

III. General Expenditures:

71 to 75 and 77—General Expenditures	483 00
76. Interest During Construction	1,501 00
Total General Expenditures	$1,984 00

Cost to reproduce new the existing property on December 31, 1921 on 1914 price levels	34,697 00
55% increase 1922 over 1914, Unit Cost year, on Accounts #1 to #77, except #2—Land for Transportation Purposes	18,817 00
Cost to reproduce new, the above, as of December 31, 1921, on the 1922 price levels	53,514 00
Working Capital and Materials and Supplies	4,480 00
Cost to reproduce new as of December 31, 1921, existing property on December 31, 1921, plus Working Capital and Materials and Supplies	57,994 00

Statement Showing Cost of Reproduction New, Less Depreciation, as of December 31, 1921, of Property Owned by The Union Sulphur Company as of December 31, 1921, and Used Jointly With The Brimstone Railroad and Canal Company

(Property Shown in Blue on Map)

Cost to Reproduce New, as of December 31, 1921, existing property on December 31, 1921, on the 1922 price levels (see above)	53,514 00
Cost to Reproduce New, as of December 31, 1921, existing property on December 31, 1921, on the 1922 price levels, less depreciation (34%)	35,319 00
Working Capital and Materials and Supplies	4,480 00
Cost to Reproduce New, as of December 31, 1921, less Depreciation, existing property on December 31, 1921, plus Working Capital and Materials and Supplies	$39,799 00

Statement of Property Owned by the Union Sulphur Company and used Jointly with the Brimstone Railroad & Canal Company

(Shown in Blue on Map)

Detail

2.761 Miles

	Unit	Value	No. units	Total
I. Roads:				
Account:				
1. Engineering—4% on Accounts 3 to 43 Inclusive				$1,240 00
2. Land for Transportation Purposes—				
Right of Way	Ac.	$35 00	13 83	484 00
3. Grading:				
Embankment—Roadway	Cu. Yds.	16	26,417	4,227 00
Excavation—Ditches	" "	16	1,617	259 00
Clearing and grubbing	Ac.	50 00	13 83	692 00
				5,178 00

6. Bridges, Trestles and Culverts:					
Concrete—Reinforced	Cu. Yds.	14 50	82	1,204 00
" —Plain	" "	12 45	30	373 00
Timber boxes—Heart Pine	M. B. M.	16 50	1 2	20 00
W. I. Pipe 10" S. H.	L. Ft.	76	420	319 00
" " 20" "	"	1 63	60	98 00
Excavation	Cu. Yds.	16	150	24 00
				2,038 00
8. Ties:				
White Oak	Ea.	69	3,518	2,427 00
Pine	"	44	5,277	2,322 00
Heart Pine—Switch	M. B. M.	16 50	21 2	350 00
				5,099 00

[fol. 534]

9. Rails:				
Bessemer—90#	G. T.	$34 90	69 00	
" 60#	"	34 90	143 70	
" 50#	"	34 90	56 43	$9,393 00
Taper Rails 8' 3" 90-60	Pr.	18 00	3	54 00
" " 8' 3" 60-50	"	17 00	2	34 00
				9,481 00

Statement of Property Owned by the Union Sulphur Company, etc.—Continued

	Unit	Value	No units	Total
10. Other Track Material:				
Spikes 5½" x 9/16	Cwt.	2 43	189 0	459 00
Bolts	"	2 43	41 2	100 00
Angle Bars	"	1 90	408	775 00
Tie Plates	"	1 89	13 2	25 00
Rail Braces	Ea.	12	200	24 00
Switch—Complete 15' 90=	"	39 00	3	117 00
" " 15' 60=	"	32 16	5	161 00
Frogs 90= 11' =7 Rigid	"	36 00	3	108 00
" 60= 7' =7 "	"	28 30	5	142 00
Guard Rails Complete 90=	Pair	13 00	3	39 00
" " " 60=	"	12 30	5	62 00
Ground Throw Switch Stands	Ea.	7 00	8	56 00
				2,068 00
11. Ballast:				
Shell	Cu. Yds.	2 00	1,563	3,126 00
Brick Bats	" "	60	329	197 00
				3,323 00
12. Track Laying and Surfacing:				
Track Laying and Surfacing	Mile	1,020 00	2 76	2,815 00
Applying ballast	Cu. Yds.	30	1,892	568 00
				3,383 00
17. Roadway Buildings—Tool House	Each	100 00	1	100 00

37. Roadway Machines:				
Push Car	Each	21 00	1	21 00
Hand "	"	35 00	1	35 00
				56 00
38. Roadway Small Tools—Tools	Set	125 00	1	125 00
43. Other Expenditures—Road—Miscellaneous	Mile	50 00	2 76	138 00
Total Road				$32,713 00

[fol. 535]

III. General Expenditures:

Account:	
71 to 75 and 77—General Expenditures 1½% on Accounts 1 and 3 to 43	$483 00
76. Interest During Construction, 6% for 9 months, one-half the construction period plus 3 months, on accounts 1 to 43, except 2, on accounts 71 to 75 and 77 and 6% for 12 months on account 2	$1,501 00
Total General Expenditures	1,984 00
" Accounts 1 to 77	34,697 00

[fol. 536] Brimstone Railroad and Canal Company

Statement Showing Cost of Reproduction New, as of December 31, 1921, of Property Owned by the Union Sulphur Company as of December 31, 1921 and Used Jointly with The Brimstone Railroad and Canal Company

(Property Shown in Green on Map)

I. Road:

Account	Amount
1. Engineering	$575 00
2. Land for Transportation Purposes	101 00
3. Grading	2,774 00
6. Bridges, Trestles and Culverts	496 00
8. Ties	2,477 00
9. Rails	3,787 00
10. Other Track Material	1,365 00
11. Ballast	1,936 00
12. Track Laying and Surfacing	1,486 00
43. Other Expenditures—Road	56 00
Total Road	$15,053 00

III. General Expenditures:

71 to 75 and 77. General Expenditures	224 00
76. Interest During Construction	689 00
Total General Expenditures	913 00
Cost to Reproduce New the existing property on December 31, 1921, on 1914 price levels	15,966 00
55% increase 1922 over 1914, Unit Cost year, on Accounts #1 to #77, except #2—Land for Transportation Purposes	8,726 00
Cost to reproduce New, the above, as of December 31, 1921, on the 1922 price level	24,692 00
Working Capital and Materials and Supplies	1,817 00
Cost to Reproduce New as of December 31, 1921, existing property on December 31, 1921, plus Working Capital and Materials and Supplies	26,509 00

Statement Showing Cost of Reproduction New, Less Depreciation, as of December 31, 1921, of Property Owned by The Union Sulphur Company as of December 31, 1921, and Used Jointly with The Brimstone Railroad and Canal Company

(Property Shown In Green on Map)

Cost to Reproduce New, as of December 31, 1921, existing property on December 31, 1921, on the 1922 price levels (see above)	24,692 00
Cost to Reproduce New, as of December 31, 1921, existing property on December 31, 1921, on the 1922 price levels, less Depreciation (34%)	16,297 00
Working Capital and Materials and Supplies	1,817 00
Cost to Reproduce New as of December 31, 1921, less Depreciation, existing property ond December 31, 1921, plus Working Capital and Materials and Supplies	18,114 00

Statement of Property Owned by the Union Sulphur Company and Used Jointly With the Brimstone Railroad & Canal Company.

Detail

(Shown in Green on Map)

1.12 Miles

	Unit	Value	No units	Total
I Road				
Account:				
1. Engineering:				
4% on Accounts 3 to 43 Inclusive				$575 00
2. Land for Transportation Purposes:				
Right of Way	Ac.	$35 00	2 89	101 00
3. Grading:				
Embankment Roadway	Cu. Yds.	16	15,772	2,524 00
Excavation Ditches	" "	16	656	105 00
Clearing and Grubbing	Ac.	50 00	2 89	145 00
				2,774 00

6. Bridges, Trestles and Culverts:				
Timber Boxes—Heart Pine	M. B. M.	16 50	2 4	40 00
Corrugated Iron Pipe 36"	L. Ft.	3 07	40	123 00
" " " 20"	"	1 70	40	68 00
Wrought " " 10" S. H.	"	76	220	167 00
" " " 20" S. H.	"	1 63	55	90 00
Excavation	Cu. Yds.	16	50	8 00
				496 00
8. Ties:				
White Oak	Ea.	69	1,542	1,064 00
Pine	"	44	2,316	1,019 00
Heart Pine—Switch	M. B. M.	16 50	23 9	394 00
				2,477 00
9. Rails:				
Bessemer—90#	G. T.	34 90	1 74	
" —60#	"	34 90	106 24	3,769 00
Taper Rail—90.60	Pr.	18 00	1	18 00
				3,787 00

Statement of Property Owned by the Union Sulphur Company, etc.—Continued

[fol. 538]

	Unit	Value	No. units	Total
10. Other Track Material:				
Spikes	Cwt.	$2 43	78	$189 00
Bolts	"	2 43	17	41 00
Angle Bars	"	1 90	171	324 00
Switch—Complete 15' 90#	Ea.	39 00	1	39 00
" " 15' 60#	"	32 16	9	289 00
Frog—90# 11' #7 Rigid	"	36 00	1	36 00
" 60# 7' #7 "	"	28 30	9	255 00
Guard Rails—Complete 90#	Pr.	13 00	1	13 00
" " " 60#	"	12 00	9	108 00
Ground Throw Switch Stands	Ea.	7 00	10	70 00
				$1,365 00
11. Ballast:				
Shell	Cu. Yds.	2 00	891	1,782 00
Brick Bats	"	60	256	154 00
				1,936 00
12. Track Laying and Surfacing:				
Track Laying & Surfacing	Mile	1,020 00	1 12	1,142 00
Applying Ballast	Cu. Yds.	36	1,147	344 00
				1,486 00

43. Other Expenditures—Road: Miscellaneous	Mi.	50 00	1 12	56 00
Total Road				$15,053 00
III General Expenditures:				
Account: 71 to 75 and 77—General Expenditures 1½% on Accounts 1 and 3 to 43				224 00
76. Interest During Construction: 6% for 9 months, one-half the construction period plus 3 months, on Accounts 1 to 43, except 2, on accounts 71 to 75 and 77 and 6% for 12 months on Account 2.				689 00
Total General Expenditures				$913 00
" Accounts 1 to 77				$15,966 00

[fol. 539] Brimstone Railroad & Canal Company

Statement Showing Amount of Return on Investment to Which Brimstone Railroad & Canal Company is Entitled on Basis of Cost of Reproduction New, Less Depreciation December 31, 1921

[fols. 540-543] I. C. C. Docket, No. 12969, Witness, ——— ———; Exhibit No. —

Brimstone Railroad & Canal Company

Statement showing amount of return to which the Brimstone Railroad & Canal Company is entitled upon the property held for and used in the service of transportation for the public generally, based on a rate of six (6) per cent per annum on cost of reproduction new, less depreciation of the property as of December 31, 1921, subdivided as between zones and equated to the test period May 26 to June 1, 1922, inclusive.

Zone	Valuation	Rate of return	Amount of return per annum	Amount of return per annum equated to the test period
Common	$459,177 49	6%	$27,550 65	$528 37
Southern Pacific ..	8,981 28	6%	538 88	10 33
Kansas City Southern	70,457 84	6%	4,227 47	81 07
Total	$538,616 61	6%	$32,317 00	$619 77

[fol. 544] Exhibit No. A-2—Filed Nov. 19, 1926. W. B. Lee, Clerk, Western District of Louisiana

[fol. 545] Filed Nov. 19, 1926. W. B. Lee, Clerk, Western District of Louisiana

Docket No. 12969—Divisions received by Brimstone Railroad & Canal Company

Detail record of seven day test conducted May 21 to May 27, 1924, inclusive, of the work performed by locomotives of the Brimstone Railroad & Canal Company, showing time consumed in each operation and number of cars handled.

Summaries of results showing total time consumed in each movement zone, number of loaded cars handled, and average time per loaded car consumed in each zone and in interchange with connecting carriers.

[fol. 546] G. J. Glidden Report, B. R. R. Engine No. 9

5/21/24.

Zone	Time From	Time To	Work performed	
1	8:00	8:09	From Enginehouse to S. W. Bin	(M)
1	8:09	8:14	To C. L. P. Box ..	(P)
1	8:14	8:21	Empties into S. W. Bin	(P)
1	8:21	8:25	Switching in S. W. Bin..	(P)
1	8:25	8:48	B. O. Cars into rip track	(C)

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time: From	To	Work performed	
1	8:48	8:51	Back to S. W. Bin	(C)
1	8:51	8:54	Flat from rice W. H. to Main track	(C)
1	8:54	8:58	Back to S. W. Bin	(C)
1	8:58	9:05	Empties into N. E. Bin	(P)
1	9:05	10:25	Loading seven gondolas	(P)
1	10:25	10:30	Taking water	(M)
1	10:30	10:36	Back to S. W. Bin	(M)
1	10:36	10:40	Pulling 18 loads into clear	(P)
1	10:40	10:55	Pulling 21 empties into S. W. Bin	(P)
1	10:55	11:07	5 Empties into N. E. Bin	(P)
1	11:07	12:12	Loading 5 gondolas in N. E. Bin	(P)
1	12:12	12:18	Back to S. W. Bin	(P)
1	12:18	12:25	3 Empties to N. E. Bin	(P)
1	12:25	1:05	Loading 3 gondolas, N. E. Bin	(P)
1	1:05	1:16	Back to S. W. Bin	(P)
1	1:16	1:20	Pulling 4 loads into clear	(P)
1	1:20	1:36	12 empties into S. W. Bin	(P)
1	1:36	2:45	Loading 5 gondolas, S. W. Bin	(P)
1	2:45	2:54	5 loads to Box C. L. P.	(P)
1	2:54	2:57	Back to S. W. Bin	(P)
1	2:57	3:10	Loading 7 gondolas at S. W. Bin	(P)
1	3:10	3:20	Getting fuel oil car and back to S. W. Bin	(P)

1	3:20	3:37	Giving fuel oil to 3 & 6 loaders at S. W. Bin	(P)
1	3:37	3:42	Pulling 7 loads into clear	(P)
1	3:42	3:54	Giving fuel oil to #5 loader at N. E. Bin	(P)
1	3:54	3:57	Taking fuel oil car back to Fuel Oil track	(P)
1	3:57	4:03	Taking fuel oil for #9 Engine	.. (M)
1	4:03	4:12	From fuel oil storage to enginehouse	(M)

[fol. 547]

5/22/24.

1	8:00	8:11	Pulling 5 empty gondolas from rip track to hold track leaving one	(C)
1	8:11	8:15	Pulling 4 gond. into S. W. Bin to B. C. L. P.	(P)
1	8:15	8:40	Spotting cars for loaders at S. W. Bin	(P)
1	8:40	8:45	Pulling 4 loads from S. W. Bin to Box C. L. P.	(P)
1	8:45	8:52	Pulling empties from hold track to S. W. Bin	(P)
1	8:52	9:06	From S. W. Bin to hold, five B. O. cars to rip track	(C)
1	9:06	9:12	From Rip track back to main	(C)
1	9:12	9:15	From Main to S. W. Bin	(P)
1	9:15	9:44	Spotting cars for loaders at S. W. Bin	(P)
1	9:44	9:49	Pulling 8 loads from S. W. Bin to Box C. L. P.	(P)
1	9:49	9:52	From Box C. L. P. back to S. W. Bin	(P)
1	9:52	10:54	Spotting cars for loaders at S. W. Bin	(P)
1	10:54	10:57	Pulling 7 loads to main line	(P)
1	10:57	11:04	Pulling 15 empties from side track leaving one B. O. car on hopper track	(P)

(C) Common carrier service.
(P) Intraplant switching.
(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time: From	To	Work performed	
1	11:04	11:07	Pulling 14 empties to S. W. Bin from main	(P)
1	11:07	12:54	Spotting cars for loaders at S. W. Bin	(P)
1	12:54	12:59	Pulling 12 loads from S. W. Bin to side track by main	(P)
1	12:59	1:04	Back to S. W. Bin, pulling two loads to side track by main	(P)
1	1:04	1:06	From main to Box C. L. P. for 1 empty	(P)
1	1:06	1:11	From Box C. L. P. to hold, pulled 16 empties into S. W. Bin	(P)
1	1:11	2:41	Spotting cars for loaders	(P)
1	2:41	2:46	Pulled 10 loads from S. W. Bin into side track by main	(P)
1	2:46	2:50	From side track back to S. W. Bin	(P)
1	2:50	3:33	Seating gondolas for loaders	(P)
1	3:33	3:37	Pulling 6 loads from S. W. Bin to sidetrack by main	(P)
1	3:37	3:40	From side track to fuel oil track	(P)
1	3:40	3:43	Taking fuel oil car from fuel track to main	(P)
1	3:43	3:48	Giving fuel oil to No. 6 loader	(P)
1	3:48	3:50	From main track back to S. W. Bin	(P)
1	3:50	3:54	Giving fuel oil to No. 3 loader at S. W. Bin	(P)
1	3:54	3:58	Taking fuel oil car from S. W. Bin to main from main to fuel oil storage tank	(P)
1	3:58	4:15	Taking fuel oil for No. 9 engine and oil car at fuel oil storage	(M)
[fol. 548]				
1	4:15	4:18	Taking fuel oil car back to fuel oil track	(P)
1	4:18	4:19	From Fuel oil track to main	(M)

1	4:19	4:30	Pulled Box Car from main track west of bin to warehouse side track	(C)
1	4:30	4:33	From warehouse side track to enginehouse	(M)

5/23/24.

1	8:09	8:11	Pulling 5 empty gondolas from rip track to hold track	(C)
1	8:11	8:15	Picked up 10 empty gondolas in hold track	(P)
1	8:15	8:18	Pulling 15 empty gond. from hold track to S. W. Bin	(P)
1	8:18	8:22	From S. W. Bin to main, from Main to B. O. Track	(C)
1	8:22	8:26	Switching out B. O. Cars at B. O. Track	(C)
1	8:26	8:34	Pulling 4 B. O. Cars from B. O. track to rip track	(C)
1	8:34	8:39	Spotting B. O. Cars at rip track	(C)
1	8:39	8:45	From rip track to main south of B. C. L. P.	(C)
1	8:45	8:47	From main to box C. L. P. spotting 1 empty box car at loader	(P)
1	8:47	8:50	Back to main then to hopper track	(P)
1	8:50	8:55	Spotting 1 loaded gondola for hopper	(P)
1	8:55	8:58	From hopper track to Main then to B. C. L. P.	(P)
1	8:58	9:06	Spotting three box cars for Box Car loader	(P)
1	9:06	9:09	From B. C. L. P. main then to hopper track	(P)
1	9:09	9:16	Spotting loaded gondolas for hopper	(P)
1	9:16	9:19	From hopper track to Main then to box C. L. P.	(P)
1	9:19	9:25	Spotting 1 box car for B. C. Loader	(P)
1	9:25	9:28	From Box C. L. P. to main then to hopper track	(P)

(C) Common carrier service

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	
1	9:28	9:43	Spotting 1 loaded gond. for hopper	(P)
1	9:43	9:46	From Hopper track to main then to Box C. L. P.	(P)
1	9:46	9:55	Spotting empty Box cars for Box car loader on East and West tracks	(P)
1	9:55	9:58	From B. C. L. P. to main then to hopper track	(P)
1	9:58	10:03	Spotting 1 loaded gondola for hopper	(P)
1	10:03	10:06	From hopper track to main then to Box c. l. p.	(P)
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1	10:06	10:15	Spotting empty box cars for Box car loader east track	(P)
1	10:15	10:17	From B. C. L. P. to main then to S. W. Bin	(P)
1	10:17	10:21	Pulling 6 loads from S. W. Bin to main	(P)
1	10:21	10:23	From main back to S. W. Bin	(P)
1	10:23	10:27	Spotting cars for loaders at S. W. Bin	(P)
1	10:27	10:31	Pulling 9 loads from S. W. Bin to Main	(P)
1	10:31	10:33	From main to hopper track	(P)
1	10:33	10:35	Pulling 5 empty gond. from hopper track to siding by main	(P)
1	10:35	10:42	Pulling 20 empty gondolas from side track to S. W. Bin	(P)
1	10:42	10:56	Spotting empty gondolas for loaders	(P)
1	10:56	11:00	Pulling one load from S. W. Bin to main then to hopper track	(P)
1	11:00	11:02	From hopper track to main then to Box C. L. P.	(P)
1	11:02	11:05	Spotting cars for B. C. Loaders	(P)
1	11:05	11:06	From B. C. L. P. to main	(P)

1	11:06	11:11	Taking picture of engine	(C)
1	11:11	11:13	From main to S. W. Bin	(P)
1	11:13	11:15	Pulling 3 loads from S. W. Bin to main	(P)
1	11:15	11:18	Pulling 3 loads from main to hopper track	(P)
1	11:18	11:22	From hopper track to main then to Box Car L. P.	(P)
1	11:22	11:37	Spotting cars for Box car loaders	(P)
1	11:37	11:40	From B. C. L. P. to main then to hopper track	(P)
1	11:40	11:41	Spotting loaded gond. from hopper	(P)
1	11:41	11:44	From hopper track to main then to water tank	(M)
1	11:44	11:46	Taking water for Engine No. 9	(M)
1	11:46	11:50	From water tank track back to hopper track	(M)
1	11:50	11:52	Spotting loaded gond. for hopper	(P)
1	11:52	11:55	From hopper track to B. C. L. P.	(P)
1	11:55	12:07	Spotting Box Cars for Box C. L. P.	(P)
1	12:07	12:12	From B. C. L. P. to main then to S. W. Bin	(P)
1	12:12	12:17	Pulling 2 loaded gond. from S. W. Bin to hopper track	(P)
1	12:17	12:21	From hopper track to B. C. L. P.	(P)

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1	12:21	12:41	Spotting Box Cars at B. C. L. P.	(P)
1	12:41	12:44	From B. C. L. P. to S. W. Bin	(P)
1	12:44	1:04	Spotting cars for loader	(P)

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	
1	1:04	1:08	Pulling 14 loads from S. W. Bin to main	(P)
1	1:08	1:14	Pulling 16 empties from sid ng, by main to S. W. Bin	(P)
1	1:14	2:13	Spotting gond. for loaders at S. W. Bin	(P)
1	2:13	2:20	Pulling 10 loads from S. W. Bin to main track	(P)
1	2:20	2:21	From main to hold track	(P)
1	2:21	2:27	Pulling 15 empty gondolas from hold track to main then to S. W. Bin	(P)
1	2:27	2:30	From S. W. Bin to main then to hopper track	(P)
1	2:30	2:33	Pulling one loaded gond. from hopper track to main	(P)
1	2:33	2:34	From main to S. W. Bin	(P)
1	2:34	2:44	From S. W. Bin to main then to oil car storage track	(P)
1	2:44	2:48	Pulling fuel oil car from oil car track to main then to S. W. Bin	(P)
1	2:48	3:01	Giving fuel oil to #3, #5 and #6 loaders at S. W. Bin	(P)
1	3:01	3:03	Pulling fuel oil car from S. W. Bin to main	(P)
1	3:03	3:05	From main to S. W. Bin	(P)
1	3:05	3:50	Spotting cars for loaders at S. W. Bin	(P)
1	3:50	3:54	Pulling 12 loads up to Main on S. W. Bin track	(P)
1	3:54	3:57	From main track to hold track	(P)
1	3:57	4:01	Pulling 9 empties from hold track to S. W. Bin	(P)
1	4:01	4:05	From S. W. Bin to hold track shifting one empty car	(P)
1	4:05	4:12	From hold track to main picking up one merchandise car and going to engine oil storage tank	(C)
1	4:12	4:17	Taking oil for Engine #9	(M)

1	4:17	4:25	From engine oil storage to main then to warehouse sidetrack with merchandise car	
1	4:25	4:30	From warehouse sidetrack to rip track spotting 1 car	(C)
1	4:30	4:35	From rip track to enginehouse	(C)
				(M)

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1	7:56	8:09	From enginehouse to rip track pulling 2 empty gond. to main then to S. W. Bin	
1	8:09	9:26	Spotting empties for loaders at S. W. Bin	(C)
1	9:26	9:30	Pulling 11 loads from S. W. Bin to main	(P)
1	9:30	9:32	From main to S. W. Bin	(P)
1	9:32	9:58	Spotting empties for loaders at S. W. Bin	(P)
1	9:58	10:01	Pulling 9 loads from S. W. Bin to main	(P)
1	10:01	10:10	Pulling 24 empties from siding by main to S. W. Bin	(P)
1	10:10	10:17	From S. W. Bin to main, spotting while engine is inspected by Mr. Boltwood	(P)
1	10:17	10:29	Pulling 3 B Cars from main track to rip track	(C)
1	10:29	10:35	On the spot at Rip track	(C)
1	10:35	10:45	From rip track to main then to S. W. Bin	(C)
1	10:45	10:51	Spotting empty gond. for loaders at S. W. Bin	(C)
1	10:51	10:56	From S. W. Bin to main then to engine water tank	(P)
1	10:56	10:58	Taking water from Engine No. 9	(M)
				(M)

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	
1	10:58	11:06*	From engine water tank to main then to S. W. Bin	(M)
1	11:06	11:40	Spotting empty gondolas for loaders at S. W. Bin	(P)
1	11:40	11:42	Pulling 14 loads from S. W. Bin to main	(P)
1	11:42	11:45	From main to S. W. Bin	(P)
1	11:45	12:35	Spotting empties for loaders at S. W. Bin	(P)
1	12:35	12:40	Pulling 7 loads from S. W. Bin to siding by main	(P)
1	12:40	12:42	From siding by main to hold track	(P)
1	12:42	12:48	Pulling 14 empties from hold track to S. W. Bin	(P)
1	12:48	1:45	Spotting empty gondolas at S. W. Bin	(P)
1	1:45	1:49	Pulling 4 loads from S. W. Bin to main	(P)
1	1:49	1:52	From main track to S. W. Bin	(P)
1	1:52	2:01	Pulling 8 loads from S. W. Bin to siding by main	(P)
1	2:01	2:06	From siding by main back to S. W. Bin	(P)
[fol. 551]				5/25/24.
1	2:06	2:12	Spotting empty gondolas for loaders at S. W. Bin	(P)
1	2:12	2:18	Pulling 2 loads from S. W. Bin to main	(P)
1	2:18	2:20	From main to hold track	(P)
1	2:20	2:25	Pulling 11 empties from hold track to S. W. Bin	(P)
1	2:25	2:40	Spotting empties for loaders at S. W. Bin	(P)
1	2:40	2:45	From S. W. Bin to main then to fuel oil car track	(P)
1	2:45	2:48	Pulling fuel oil car to main then to S. W. Bin	(P)

1	2:48	3:01	Giving fuel oil to #3, #5 and #6 Loaders at S. W. Bin	(P)
1	3:01	3:31	Spotting empties for loaders at S. W. Bin	(P)
1	3:31	3:39	Pulling 7 loads from S. W. Bin to side track by main	(P)
1	3:39	3:41	From side track by main to S. W. Bin	(P)
1	3:41	3:45	Pulling 2 loads from S. W. Bin to side track by main	(P)
1	3:45	3:50	Pulling fuel oil car from main to fuel oil track	(P)
1	3:50	3:51	From fuel oil track to engine oil storage tank	(P)
1	3:51	3:57	Taking oil for #9 engine	(M)
1	3:57	4:03	From Engine oil storage tank to main then to enginehouse	(M)
1	4:03	4:09	Switching engine #12 in enginehouse. From East to West Track	(C)

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1	6:09	6:10*	From Enginehouse to main then to zone 3	(MC)
3	6:10	6:12	To track scales	(C)
3	6:12	6:40	On the spot at track scales pumping water from scales	(C)
3	6:40	6:42	From track scales to zone 1	(C)
1	6:42	6:45	On main then to fuel oil track	(C)
1	6:45	9:19	Spotting loaded oil cars on fuel oil track	(P)
1	9:19	9:25	Pulling 11 empty & 8 loaded oil cars from fuel oil track to zone 4	(C)
4	9:25	9:30	Pulling 19 cars to scale track leaving 11 empties	(C)

* 4 minutes of this time transferred from Miscellaneous to Intraplant switching.
† 7 minutes assigned to Miscellaneous and 3 minutes to Common Carrier Service.

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	INITIAL	NUMBER	
				SPAX	343	
				SPAX	324	EMPTY
				SPAX	336	Oil cars.
				SPAX	540	
				SPAX	339	
				SPAX	415	
				SPAX	314	
				GATX	16075	
				INOX	936	
				LORX	310	
				GATX	20370	
				GATX	10980	
				GATX	29127	Loaded
				GATX	11065	OIL
				GATX	4486	Cars.
				GATX	10925	
				GATX	11069	
				GATX	9073	
				GATX	1472S	
4	9:30	9:35	Pulling 8 loaded oil cars back from scale track to Zone 1			(C)
1	9:35	9:38	From main on Zone 1 to fuel oil track with 8 loaded oil cars			(C)

1	9:38	9:45	On the spot at fuel oil storage	
1	9:45	9:47	From fuel oil storage to oil car storage track getting one flat	(P)
				(P)

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1	9:47	9:50	Pulling one flat from oil car storage track to end of Main track by Bat. 4	(P)
	9:50	9:55	Pulling two loaded flats from end of main track to Bat. 3 spur	(P)
	9:55	11:55	On the Spot at main	(P)
1	11:55	11:58	From main to NE bin	(P)
1	11:58	12:52	On the Spot at NE bin	(P)
1	12:52	1:00	From NE bin to main then to engine fuel oil station	(P)
1	1:00	1:07	Taking fuel oil for engine #12	(C)
1	1:07	1:12	From engine fuel oil station to main then to enginehouse	(C)
1	1:12	1:14	From enginhouse to laboratory by warehouse	(M)
1	1:14	1:30	On the spot getting lubricating oil at warehouse	(C)
1	1:30	1:32	From warehouse to enginehouse	(C)
1	1:32	2:00	On the spot oiling and repairing engine #12	(C)
				(C)

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1	8:00	8:09	From enginhouse to main	
1	8:09	8:12	From main to SW bin	(M)
1	8:12	8:18	Pulling four empties from SW bin to hopper track	(P)
				(P)

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	
1	8:18	8:22	Pulling nine empties (Gond.) from hopper track to main	(P)
1	8:22	8:40	Pulling 24 empty gondolas from main to SW bin	(P)
[fol. 554]				5/26/24.
1	8:40	8:44	Spotting empties for loaders at SW bin	(P)
1	8:44	8:46	From SW bin to main then to fuel oil storage track	(P)
1	8:46	8:51	Pulling fuel oil car from fuel oil storage track to NE bin	(P)
1	8:51	8:58	Giving fuel oil to #2 loader at NE bin	(P)
1	8:58	9:02	Pulling fuel oil car from NE bin to fuel oil track	(P)
1	9:02	9:04	From fuel oil track to B. O. track	(C)
1	9:04	9:12	Pulling two B. O. cars from B. O. track to rip track	(C)
1	9:12	9:20	Switching cars on rip track	(C)
1	9:20	9:25	Pulling two Gondolas from rip track to siding by main	(C)
1	9:25	9:27	From siding track by main to SW bin	(P)
1	9:27	9:44	Spotting empties for loading at SW bin	(P)
1	9:44	9:48	Pulling 2 loads from SW bin to hopper track	(P)
1	9:48	10:00	Spotting loaded Gond. for hopper	(P)
1	10:00	10:03	From hopper track to BCLP	(P)
1	10:03	10:15	Spotting box cars for box car loaders at BCLP	(P)
1	10:15	10:18	From BCLP to SW bin	(P)
1	10:18	10:25	Pulling 4 loaded Gond. from SW bin to hopper track	(P)
1	10:25	10:29	From hopper track to siding by main	(P)

1	10:29	10:32	Pulling 2 empty Gond. from siding by main to SW bin	(P)
1	10:32	10:35	From SW bin to hopper track	(P)
1	10:35	10:40	Spotting loaded Gond. for hopper	(P)
1	10:40	10:43	From hopper track to BCLP	(P)
1	10:43	10:51	Spotting box cars at BCLP	(P)
1	10:51	10:54	From BCLP to hopper track	(P)
1	10:54	11:10	Spotting loaded box cars for hopper	(P)
1	11:10	11:14	From hopper track to SW bin	(P)
1	11:14	11:18	Spotting empties for loading at SW bin	(P)
1	11:18	11:24	Pulling 9 loads from S. W. Bin to main	(P)
1	11:24	11:28	Pulling 9 empty gond. from fuel oil track, to main then to SW bin	(P)

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1	11:28	11:30	From SW bin to BCLP	(P)
1	11:30	11:32	Spotting box cars at BCLP	(P)
1	11:32	11:35	From BCLP to hopper track	(P)
1	11:35	11:44	Pulling empty gond. from hopper track to SW Bin	(P)
1	11:44	11:51	From S. W. Bin to main then to engine water tank	(M)
1	11:51	11:54	Taking water for Engine #9	(M)
1	11:54	11:58	From engine track to main then to S. W. Bin	(M)
1	11:58	12:02	Pulling 2 loaded Gond. from SW bin to Hopper track	(P)
1	12:02	12:05	Spotting loaded gond. for hopper	(P)

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	
1	12:05	12:09	From Hopper to BCLP	(P)
1	12:09	12:25	Spotting box cars at BCLP	(P)
1	12:25	12:30	From BCLP to SW bin	(P)
1	12:30	12:32	Spotting empties for loading at SW bin	(P)
1	12:32	12:37	Pulling 2 loads from SW bin to hopper track	(P)
1	12:37	12:40	From Hopper to BCLP	(P)
1	12:40	12:42	Spotting Box Cars at BCLP	(P)
1	12:42	12:44	From BCLP to hold track	(P)
1	12:44	12:49	Pulling 10 box cars from hold track to BCLP	(P)
1	12:49	12:50	Spotting box cars for BCLP	(P)
1	12:50	12:53	From BCLP to hopper track	(P)
1	12:53	1:04	Spotting loaded box cars for hopper	(P)
1	1:04	1:07	From hopper track to BCLP	(P)
1	1:07	1:10	Spotting box cars at BCLP	(P)
1	1:10	1:14	From BCLP to SW bin	(P)
1	1:14	1:20	Pulling 12 loaded Gond. from SW bin to main leaving 7	(P)
1	1:20	1:23	Pulling 5 loaded Gond. to hopper track	(P)
1	1:23	1:26	From hopper track to SW bin	(P)
1	1:26	1:35	Pulling 10 loaded Gond. from SW bin to main	(P)
1	1:35	1:40	Pulling 25 empty Gond. from siding by main to SW bin	(P)
1	1:40	1:45	From SW bin to hopper track	(P)
1	1:45	1:47	From hopper track to BCLP	(P)

1	1:47	2:01	Spotting empties for loading at BCLP	
1	2:01	2:03	From BCLP to hopper track	(P)
[fol. 556]				(P)
1	2:03	2:04	Spotting loaded gond. for hopper	
1	2:04	2:08	From hopper track to fuel oil track	(P)
1	2:08	2:15	Pulling 8 empty gond. from fuel oil track to hold	(P)
1	2:15	2:18	From hold track to BCLP	(P)
1	2:18	2:20	Spotting cars for BC loader	(P)
1	2:20	2:22	From BCLP to hopper track	(P)
1	2:22	2:25	Spotting loaded gond. for hopper	(P)
1	2:25	2:29	From hopper track to engine water tank	(P)
1	2:29	2:33	Taking water for engine 9	(P)
1	2:33	2:37	From engine water tank to main then to BCLP	(M)
1	2:37	2:39	Spotting box cars for loader at BCLP	(M)
1	2:39	2:43	From BCLP to SW bin	(M)
1	2:43	2:51	Pulling 14 loads from SW bin to Siding by main	(P)
1	2:51	2:53	From siding by main to hopper track	(P)
1	2:53	2:56	From hopper track to BCLP	(P)
1	2:56	3:03	Spotting box cars for loading at BCLP	(P)
1	3:03	3:07	From BCLP to SW bin	(P)
1	3:07	3:17	Spotting empty cars for loading at SW bin	(P)
1	3:17	3:26	Pulling 11 loaded gond. for SW bin to side track by main track	(P)

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	
1	3:26	3:28	From side track by main to hold track	(P)
1	3:28	3:30	Pulling 8 empties from hold track by main	(P)
1	3:30	3:32	From main to hopper track	(P)
1	3:32	3:33	Pulling 9 empties to main	(P)
1	3:33	3:39	Pulling 17 empty gond. from main to S. W. Bin	(P)
1	3:39	3:42	From S. W. bin to main then to fuel oil car track	(P)
1	3:42	3:45	Pulling fuel oil car from fuel oil track to S. W. Bin	(P)
1	3:45	3:57	Giving oil to loaders #2 & #3 at SW bin	(P)
1	3:57	4:09	Pulling fuel oil car from SW bin to main then to engine oil storage	(P)
1	4:09	4:12	Filling fuel car with oil at engine oil storage	(P)
1	4:12	4:17	Taking oil for engine #9 at engine oil storage	(M)
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1	4:17	4:23	Pulling fuel oil car from engine oil storage to main then to NE bin	(P)
1	4:23	4:37	Giving fuel oil to loaders #5 and #6 at NE bin	(P)
1	4:37	4:41	Pulling fuel oil car from NE bin to Fuel oil car track	(P)
1	4:41	4:47	From fuel car track to main then to engine shed	(M)
				5/27/24.
1	7:55	7:58	From Engine house to rip track	(M)
1	7:58	8:10	Pulling 1 empty from rip track to main then to SW bin	(C)
1	8:10	8:25	Spotting empty gond. for loaders at SW bin	(P)

1	8:25	8:30	Pulling 1 loaded gond. from SW bin to hopper track	
1	8:30	8:33	From hopper track to BCLP	(P)
1	8:33	8:39	Spotting box car for loaders at BCLP	(P)
1	8:39	8:42	From BCLP to SW bin	(P)
1	8:42	8:49	Pulling 2 loaded gond. from SW bin to hopper track	(P)
1	8:49	8:50	Spotting loaded gond. for hopper	(P)
1	8:50	8:53	From hopper track to BCLP	(P)
1	8:53	8:55	Spotting box cars for loaders at BCLP	(P)
1	8:55	8:58	From BCLP to hopper track	(P)
1	8:58	9:03	Spotting loaded gond. for hopper	(P)
1	9:03	9:06	From hopper track to SW bin	(P)
1	9:06	9:10	Pulling 7 loads from SW bin to main	(P)
1	9:10	9:11	From main to hold track	(P)

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1	9:11	9:14	Pulling 6 empty gond. from hold track to main then to SW bin	(P)
1	9:14	9:50	Spotting empty gond. for loaders at SW bin	(P)
1	9:50	9:55	Pulling 6 loads from SW bin to main	(P)
1	9:55	9:58	From main to SW bin	(P)
1	9:58	10:03	Pulling 8 loads from SW bin to main	(P)
1	10:03	10:04	From main to siding by main	(P)
1	10:04	10:18	Pushing #6 sulphur loader from siding by main to pipe yard	(P)

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	
1	10:18	10:25	From pipe yard to main then to engine water tank	(P)
1	10:25	10:29	Taking water for engine = 9	(M)
1	10:29	10:35*	From engine water tank to main then to SW bin	(M)
1	10:35	11:02	Spotting empty gond. at SW bin	(P)
1	11:02	11:06	Pulling 7 loads from SW bin to main	(P)
1	11:06	11:08	From main to hopper track	(P)
1	11:08	11:09	Pulling 3 empties from hopper on hopper track to clear of main	(P)
1	11:09	11:12	From main to SW bin	(P)
1	11:12	12:40	Spotting empty gondolas for loaders at SW bin	(P)
1	12:40	12:45	Pulling 10 loaded gond. from SW bin to siding by main	(P)
1	12:45	12:46	From siding by main to SW bin	(P)
1	12:46	1:15	Spotting empty gond. for loaders at SW bin	(P)
1	1:15	1:20	Pulling 5 loads from SW bin to siding by main	(P)
1	1:20	1:22	From siding by main to hopper track	(P)
1	1:22	1:25	Pulling 3 empties from hopper track to main then to SW bin	(P)
1	1:25	2:53	Spotting empty gond. for loaders at SW bin	(P)
1	2:53	2:55	Pulling 10 loads from S. W. bin to main	(P)
1	2:55	2:57	From main to SW bin	(P)
1	2:57	2:58	Spotting 1 gond. for loaders at SW bin	(P)
1	2:58	3:00	From SW bin to main then to engine water tank	(M)
1	3:00	3:02	Taking water for engine No. 9	(M)
1	3:02	3:06	From engine water tank to main then to rip track	(C)

1	3:06	3:15	From rip track to main then to SW bin	
1	3:15	3:17	Pulling 1 loaded gond. from SW bin to BCL track	(C) (P)

[fol. 559]

1	3:17	3:20	From BCL track to main then to engine oil storage track	
1	3:20	3:24	Pulling fuel oil car from engine oil storage track to main then to SW bin	(P)
1	3:24	3:45	Giving fuel oil to loaders #2, #3, #5, and #6 at SW bin	(P)
1	3:45	3:52	Pulling fuel oil car from SW bin to main then to engine oil track	(P)
1	3:52	3:58	Taking fuel oil for #9 engine	(P)
1	3:58	4:10	Taking fuel oil for fuel oil car	(M)
1	4:10	4:11	Pulling fuel oil car from engine oil tank to fuel oil car track	(P)
1	4:11	4:18	From fuel oil car track to main then to engine house	(P) (M)

*The time of Engine No. 9 from 10:29 A. M. to 10:35 A. M., going from water station to S. W. Bin, was assigned 4 minutes to Miscellaneous and 2 minutes to Intraplant switching, on account of preceding switching movements.

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

[fol. 560] Date: May 21st, 1924

Engine #10

Time in zone			Time out zone		
Zone	Time	No. cars	Zone	Time	No. cars
1	8:00		1	8:05	
2	8:05		2	8:20	22
1	8:20	22	1	8:40	
2	8:40		2	8:50	30
1	8:50	30	1	9:05	
3	9:05	18	3	9:40	
2	9:40	4	2	9:55	4
3	9:55	4	3	10:02	
1	10:02	4	1	10:49	
3	10:49	18	3	11:17	
2	11:17	18	2	11:34	
1	11:34				
		Noon			
			1	1:14	
3	1:14	17	3	1:40	
4	1:40		4	1:43	
1	1:43		1	1:49	
4	1:49	15	4	1:55	
3	1:55	15	3	2:17	
2	2:17	32	2	2:25	
4	2:25		4	2:37	
1	2:37		1	2:46	
4	2:46	21	4	2:57	8
5	2:57	29	5	4:10	8
4	4:10	8	4	4:15	
1	4:15	8	1	4:25	
3	4:25	11	3	4:45	
2	4:45		2	4:50	
1	4:50		1	5:00	

[fol. 561] Date: May 22nd, 1924

Engine #10

Time in zone			Time out zone		
Zone	Time	No. cars	Zone	Time	No. cars
1	8:00		1	8:05	
2	8:05		2	8:20	25
1	8:20	25	1	8:28	
2	8:28		2	8:40	32
1	8:40	32	1	8:54	
3	8:54	4	3	9:15	
1	9:15		1	9:30	
2	9:30		2	9:46	2
1	9:46	2	1	10:07	
2	10:07		2	10:14	
1	10:14		1	10:18	
3	10:18	8	3	10:39	
1	10:39		1	10:48	
4	10:48	8	4	10:55	
1	10:55		1	11:00	
3	11:00	7	3	11:18	
2	11:18	30	2	11:29	
1	11:29		1	11:42	
2	11:42	1	2	11:48	
1	11:48				
		Noon			
			1	1:14	
3	1:14	14	3	1:42	
4	1:42		4	1:46	14
5	1:46	14	5	3:07	10
4	3:07	10	4	3:13	
1	3:13	10	1	3:22	
3	3:22	10	3	3:53	
2	3:53	20	2	4:03	1
3	4:03	1	3	4:10	
1	4:10	1	1	4:22	
2	4:22	1	2	4:27	
3	4:27	7	3	4:45	
1	4:45	1	1	5:00	

[fol. 562] Date: May 23rd, 1924

Engine #10

Time in zone			Time out zone		
Zone	Time	No. cars	Zone	Time	No. cars
1	8:00		1	8:06	
2	8:06		2	8:20	24
1	8:20	24	1	8:29	
2	8:29		2	8:42	31
1	8:42	31	1	8:45	
2	8:45		2	8:58	9
3	8:58	9	3	9:18	
1	9:18	9	1	9:44	
4	9:44		4	9:55	
5	9:55		5	11:04	19
4	11:04	19	4	11:08	
3	11:08	1	3	11:12	
4	11:12		4	11:15	
1	11:15	19			

Noon

			1	1:05	
3	1:05	15	3	1:27	
1	1:27		1	1:32	
3	1:32	14	3	1:52	
1	1:52		1	2:00	
3	2:00	15	3	2:41	
2	2:41	14	2	2:50	
1	2:50		1	3:00	
4	3:00	12	4	3:05	
3	3:05		3	3:10	
2	3:10	35	2	3:24	1
1	3:24	1	1	3:35	
3	3:35	11	3	3:52	
1	3:52		1	3:59	
3	3:59	12	3	4:25	
2	4:25	28	2	4:33	
4	4:33		4	4:46	23
5	4:46	23	5	6:02	23
4	6:02	23	4	6:11	
1	6:11	1	1	6:17	

[fol. 563] Date: May 24th, 1924

Engine #10

Time in zone			Time out zone		
Zone	Time	No. cars	Zone	Time	No. cars
1	8:00		1	8:12	
4	8:12	6	4	8:20	
1	8:20	22	1	8:30	
2	8:30		2	8:42	23
1	8:42	23	1	8:50	
2	8:50		2	9:08	30
1	9:08	30	1	9:31	
3	9:31	11	3	9:50	
2	9:50		2	9:58	1
1	9:58	1	1	10:04	
3	10:04	9	3	10:20	
1	10:20		1	10:56	
2	10:56	2	2	11:12	
3	11:12	1	3	11:19	
1	11:19	1	1	11:45	
3	11:45	14	3	11:58	
1	11:58				

Noon

			1	1:15	
3	1:15	7	3	1:42	
2	1:42	35	2	1:53	
1	1:53		1	1:57	
4	1:57	10	4	2:16	30
5	2:16	30	5	3:51	33
4	3:51	33	4	4:02	
1	4:02	22	1	4:16	
2	4:16	1	2	4:22	
3	4:22	23	3	4:57	
2	4:57	28	2	5:05	
4	5:05		4	5:09	
3	5:09	11	3	5:31	
1	5:31		1	6:00	

[fol. 564] Date: May 25th, 1924

Engine #10

No work. Sunday.

Date: May 26th, 1924

Time in zone			Time out zone		
Zone	Time	No. cars	Zone	Time	No. cars
1	8:00		1	8:04	
2	8:04		2	8:21	22
1	8:21	22	1	8:33	
4	8:33	11	4	8:39	
1	8:39	11	1	8:48	
2	8:48		2	9:13	35
1	9:13	35	1	9:24	
2	9:24		2	9:49	14
3	9:49	14	3	10:10	
1	10:10	14	1	11:25	
3	11:25	7	3	11:39	
2	11:39	1	2	11:43	
1	11:43		1	11:47	
3	11:47	9	3	11:55	
1	11:55				
		Noon			
			1	1:07	
3	1:07		3	1:17	
1	1:17		1	1:42	
3	1:42	17	3	2:07	
2	2:07	25	2	2:18	
4	2:18	1	4	2:30	29
5	2:30	30	5	3:47	35
4	3:47	35	4	3:53	
2	3:53	11	2	4:00	
1	4:00	24	1	4:09	
3	4:09	26	3	4:46	
2	4:46	26	2	4:55	
1	4:55		1	5:00	

[fol. 565] Date: May 27th, 1924

Engine #10

Time in zone			Time out zone		
Zone	Time	No. cars	Zone	Time	No. cars
1	8:00		1	8:05	
2	8:05		2	8:25	38
1	8:25	40	1	8:35	
2	8:35		2	8:42	1
1	8:42	1	1	9:21	
3	9:21	16	3	9:48	
1	9:48		1	10:13	
3	10:13	21	3	11:08	
2	11:08	12	2	11:22	
1	11:22		1	11:28	
3	11:28	7	3	11:38	
1	11:38				
		Noon			
			1	1:08	
2	1:08		2	1:12	
1	1:12	11	1	1:18	
3	1:18	10	3	1:40	
2	1:40	35	2	1:50	
1	1:50		1	1:53	
3	1:53	5	3	2:06	
1	2:06		1	2:11	
3	2:11	1	3	2:16	
2	2:16	2	2	2:20	
1	2:20		1	2:56	
3	2:56	10	3	3:21	
2	3:21	16	2	3:27	
1	3:27		1	3:32	
4	3:32	11	4	3:46	30
5	3:46	41	5	4:45	12
4	4:45	12	4	4:49	
1	4:49	13	1	6:00	

Detail Record of Seven-day Test, etc.—Continued

[fol. 566]

Date: May 21st, 1924

Engine #10

Initials	Number	L or E	From	To	From	To
B. R. R.	745	E	SP	Bin		
"	622	"	"	"		
"	516	"	"	"		
"	929	"	"	B. O.		
"	608	"	"	Bin		
"	722	"	"	"		
"	515	"	"	"		
"	728	"	"	"		
"	903	"	"	"		
"	912	"	"	"		
"	902	"	"	"		
"	719	"	"	"		
"	904	"	"	"		
"	701	"	"	"		
"	730	"	"	"		
"	908	"	"	B. O.		
"	611	"	"	Bin		
"	926	"	"	"		
"	920	"	"	"		
"	816	"	"	"		
"	512	"	"	"		

601		H. T.
572		"
716		"
717		"
730		"
615		B. O. H. T.
965		"
921		"
915		"
517		"
523		"
646		"
618		"
530		"
815		"
613		"
748		"
527		"
630		"
901		"
819		"
680		"
900		"
728		B. O. H. T.
806		"
507		"

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	704	E	SP	HT		
"	518	"	"	"		
"	734	"	"	"		
"	725	"	"	"		
ML&T	18005	L	"	Warehouse		
[fol. 567]						
SP	35328	L	B. C. L.	Scales	Scales	S. P.
"	18169	L	"	"	"	H. T. 2
GHSA	38126	L	"	"	"	S. P.
SP	17340	L	"	"	"	H. T. 2
SLSF	130428	L	"	"	"	K. C. S.
CM&STP	701953	L	"	"	"	"
KCS	16023	L	"	"		
UP	78567	L	"	"		
KCS	14944	L	"	"	Scales	K. C. S.
CB&Q	104508	L	"	"	"	"
MC	92012	L	"	"	"	"
MC	63011	L	"	"		
WP	15036	L	"	"	Scales	K. C. S.
MC	63430	L	"	"		
M&STL	18908	L	"	"		
M&STL	22014	L	"	"		
I&N	11176	L	"	"	Scales	K. C. S.

GN	126210	L	"	"		
UP	79137	E	S. P.	Scales	Scales	B. C. L.
NYC	208799	E	"	"	"	"
IC	159679	E	"	"	"	"
GATX	13677	E	O. P.	K. C. S.		
GATX	14146	E	"	"		
"	23058	E	"	"		
"	18047	E	"	"		
"	20000	E	"	"		
"	13387	E	"	"		
"	8803	E	"	"		
LORX	13760	E	"	"		
"	272	E	"	"		
GATX	129	E	"	"		
"	21543	E	"	"		
"	13064	E	"	"		
"	16239	E	"	"		
INOX	16077	E	"	"		
GATX	994	E	"	"		
"	14311	E	"	"		
"	9276	E	"	"		
"	14895	E	"	"		
"	17110	E	"	"		
INOX	20945	E	"	"		
	538	E	"	"		

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	916	L	Bin	Scales	Scales	S. P.
"	911	L	"	"	"	"
"	713	L	"	"	"	"
"	620	L	"	"	"	"
"	614	L	"	"	"	"
"	922	L	"	"	"	"
"	918	L	"	"	"	"
"	826	L	"	"	"	"
[fol. 568]						
BRR	604	L	Bin	Scales	Scales	S. P.
"	609	L	"	"	"	"
"	913	L	"	"	"	"
"	710	L	"	"	"	"
"	700	L	"	"	"	"
"	811	L	"	"	"	"
"	805	L	"	"	"	"
"	705	L	"	"	"	"
"	731	L	"	"	"	"
"	803	L	"	"	"	"
"	730	L	"	"	"	"
"	905	L	"	"	"	"
"	921	L	"	"	"	"
"	915	L	"	"	"	"
"	517	L	"	"	"	"

523	L		
606	L		
618	L		
530	L		
815	L		
613	L		
718	L		
527	L		
610	L		
901	L		
819	L		
600	L		
903	L	via	B
912	L		B
902	L		B
608	L		B
722	L		B
515	L		B
726	L		B
828	L		B
725	L		B
734	L		B
518	L		B
704	L		B
507	L		B
806	L		B
723	L		B

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
GATX	13176	L	K. C. S.	Oil Pit		
"	20807	L	"	"		
"	13171	L	"	"		
"	14076	L	"	"		
"	13273	L	"	"		
"	14329	L	"	"		
SPAX	455	L	"	"		
"	500	L	"	"		
[fol. 569]						
BRR	516	L	Clear	Scales		
"	622	L	"	"		
"	512	L	"	"		
"	920	L	"	"		
"	926	L	"	"		
"	611	L	"	"		
"	504	L	"	"		
"	601	L	"	"		
"	522	L	"	"		
"	716	L	"	"		
"	717	L	"	"		

Date: May 22nd, 1924

Engine #10

BRR	528	E	S. P.	Bin	.....	.....
"	621	"	"	"	.....	.....
"	736	"	"	"	.....	.....
"	737	"	"	"	.....	.....
"	715	"	"	"	.....	.....
"	505	"	"	"	.....	.....
"	809	"	"	"	.....	.....
"	510	"	"	"	.....	.....
"	519	"	"	"	.....	.....
"	825	"	"	"	.....	.....
"	721	"	"	"	.....	.....
"	907	"	"	"	.....	.....
"	919	"	"	"	.....	.....
"	800	"	"	"	.....	.....
"	813	"	"	"	.....	.....
"	817	"	"	"	.....	.....
"	707	"	"	"	.....	.....
"	807	"	"	"	.....	.....
"	909	"	"	"	.....	.....
"	824	"	"	"	.....	.....
"	740	"	"	"	.....	.....
"	827	"	"	"	.....	.....
.....	513	"	"	"	.....	.....

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	504	E	S. P.	Bin		
"	521	E	"	B. O.		
"	508	E	S. P.	H. T.		
[fol. 570]						
BRR	823	"	"	"		
"	735	"	"	"		
"	804	"	"	"		
"	812	"	"	"		
"	821	"	"	"		
"	810	"	"	"		
"	619	"	"	"		
"	503	"	"	"		
"	914	"	"	"		
"	724	"	"	"		
"	917	"	"	"		
"	712	"	"	"		
"	720	"	"	"		
"	703	"	"	"		
"	733	"	"	"		
"	616	"	"	"		
"	808	"	"	"		
"	910	"	"	B. O.		
"	526	"	"	H. T.		

"							
"	927	"	"	"			
"	924	"	"	"			
"	501	"	"	"			
"	727	"	"	"			
"	801	"	"	"			
"	814	"	"	"			
"	744	"	"	"			
"	714	"	"	"			
"	741	"	"	"			
"	711	"	"	"			
"	742	"	"	"			
"	607	L	Clear	Scales	Scales	S. P.	
"	511	L	"	"	"	"	
"	617	L	"	"	"	"	
"	729	L	"	"	"	"	
MStL	612	L	Scales	K. C. S.			
MStL	22014	L	"	"			
MC	18908	L	"	"			
MC	6343	L	"	"			
UP	63011	L	"	"			
KCS	78567	L	"	"			
PFE	16023	L	S. P.	Warehouse			
SP	17401	L	"	"			
SP	21253	L	H. T. 2	S. P.			
	17340	L	"	"			

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	801	L	Clear	Scales	Scales	S. P.
"	814	L	"	"	"	"
"	744	L	"	"	"	"
"	714	L	"	"	"	"
[fol. 571]						
BRR	741	L	Clear	Scales	Scales	S. P.
"	711	L	"	"	"	"
"	742	L	"	"	"	"
"	607	L	"	"	"	"
"	516	L	Scales	S. P.		
"	622	L	"	"		
"	512	L	"	"		
"	920	L	"	"		
"	926	L	"	"		
"	611	L	"	"		
"	904	L	"	"		
"	601	L	"	"		
"	522	L	"	"		
"	716	L	"	"		
"	717	L	"	"		
SPAX	500	E	Oil Pit	KCS		
"	455	E	"	"		
GATX	14329	E	"	"		

"	13273	E	"	"			
"	14076	E	"	"			
"	13171	E	"	"			
"	20807	E	"	"			
"	13176	E	"	"			
BRR	616	L	Clear	Scales	Scales	S. P.	
"	808	L	"	"	"	"	
"	910	L	"	"	"	"	
"	927	L	"	"	"	"	
"	924	L	"	"	"	"	
"	501	L	"	"	"	"	
"	727	L	"	"	"	"	
ML&L	18005	E	H. T.	S. P.			
BRR	812	L	Clear	Scales	Scales	S. P.	
"	821	L	"	"			
"	810	L	"	"			
"	619	L	"	"			
"	503	L	"	"			
"	914	L	"	"			
"	724	L	"	"			
"	917	L	"	"			
"	804	L	"	"			
"	720	L	"	"			
"	703	L	"	"			
"	733	L	"	"			
"	735	L	"	"			
"	823	L	"	"			

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
SPAX	304	L	KCS	Oil Pit	.. ..	.. ..
"	444	L	"	"	.. ..	.. ..
"	363	L	"	"	.. ..	.. ..
[fol. 572]						
SPAX	530	L	KCS	Oil Pit	.. ..	.. ..
"	534	L	"	"	.. ..	.. ..
GATX	20702	L	"	"	.. ..	.. ..
"	14837	L	"	"	.. ..	.. ..
"	20925	L	"	"	.. ..	.. ..
"	7944	L	"	"	.. ..	.. ..
"	14094	L	"	"	.. ..	.. ..
BRR	519	L	Clear	Scales	Scales	S. P.
"	510	L	"	"	"	"
"	809	L	"	"	"	"
"	505	L	"	"	"	"
"	715	L	"	"	"	"
"	737	L	"	"	"	"
"	736	L	"	"	"	"
"	621	L	"	"	"	"
"	528	L	"	"	"	"
"	712	L	"	"	"	"

SOU	166507	L	S. P.	Scales	Scales	Warehouse
SP	21253	E	H. T.	"	"	B. C. L.
PFE	17401	E	"	S. P.	.....	.....
BRR	813	L	Clear	Scales	.....	.....
"	800	L	"	"	.....	.....
"	919	L	"	"	.....	.....
"	907	L	"	"	.....	.....
"	721	L	"	"	.....	.....
"	825	L	"	"	.....	.....

Date: May 23rd, 1924

Engine #10

BRR	618	E	S. P.	Bin	.....	.....
"	606	E	"	"	.....	.....
"	523	E	"	"	.....	.....
"	517	E	"	"	.....	.....
"	518	E	"	"	.....	.....
"	704	E	"	"	.....	.....
"	507	E	"	"	.....	.....
"	806	E	"	"	.....	.....
"	723	E	"	"	.....	.....
"	600	E	"	"	.....	.....
"	619	E	"	"	.....	.....

Detail Record of Seven-day Test, etc.—Continued

[fol. 573]

Initials	Number	L or E	From	To	From	To
BRR	901	E	S. P.	Bin	..	.. ..
"	610	E	"	"	.....	...
"	527	E	"	"	.....	...
"	903	E	"	"	.....	...
"	912	E	"	"	.....	...
"	902	E	"	"	.....	...
"	608	E	"	"	.....	...
"	722	E	"	"	.....	...
"	515	E	"	"	.....	...
"	728	E	"	"	.....	...
"	828	E	"	"	.....	...
"	725	E	"	"	.....	...
"	734	E	"	"	.....	.....
"	530	E	"	H. T.	....	.....
"	815	E	"	"	.....	.....
"	613	E	"	"	.....	.....
"	718	E	"	"	.....	.....
"	805	E	"	"	.....	.....
"	705	E	"	"	.....	.....
"	731	E	"	"	.....	.....
"	803	E	"	"	.....	.....
"	730	E	"	"	.....	.....

"	905	E	"	"	.....	.....
"	921	E	"	"	.....	.....
"	915	E	"	"	.....	.....
"	918	E	"	"	.....	.....
"	826	E	"	"	.....	.....
"	604	E	"	"	.....	.....
"	609	E	"	"	.....	.....
"	913	E	"	"	.....	.....
"	710	E	"	"	.....	.....
"	700	E	"	"	.....	.....
"	811	E	"	"	.....	.....
"	706	E	"	"	.....	.....
"	605	E	"	"	.....	.....
"	818	E	"	"	.....	.....
"	916	E	"	"	.....	.....
"	911	E	"	"	.....	.....
"	713	E	"	"	.....	.....
"	620	E	"	"	.....	.....
"	614	E	"	"	.....	.....
"	922	E	"	"	.....	.....
"	928	E	"	"	.....	.....
"	702	E	"	"	.. ..	.. ..
GHSA	38158	E	S. P.	Scales	Scales	B. C. L.
"	50571	E	"	"	"	"
SP	25254	E	"	"	"	"
GHSA	50140	E	"	"	"	"

Detail Record of Seven-day Test, etc.—Continued

[fol. 574]

Initials	Number	L or E	From	To	From	To
SP	27255	E	S. P.	Scales	Scales	B. C. L.
SP	86339	E	S. P.	"	"	"
GHSA	35677	"	"	"	"	"
"	59408	"	"	"	"	"
SP	26837	L	KCS	Oil Pit		
CORX	461	"	"	"		
"	472	"	"	"		
"	320	"	"	"		
"	337	"	"	"		
"	316	"	"	"		
"	475	"	"	"		
"	218	"	"	"		
"	467	"	"	"		
"	446	"	"	"		
SPAX	348	"	"	"		
"	513	"	"	"		
"	471	"	"	"		
"	430	"	"	"		
"	367	"	"	"		
"	480	"	"	"		
"	302	"	"	"		
INOX	578	"	"	"		
GATX	18207	L	"	"		

L&A	2524	E	"			
SPAX	304	"	Oil Pit	Scales	Scales	B. L. C.
"	344	"	"	Scale Track	Scale Track	K. C. S.
"	363	"	"	"	"	"
"	530	"	"	"	"	"
"	534	"	"	"	"	"
GATX	20702	"	"	"	"	"
"	14837	"	"	"	"	"
"	20925	"	"	"	"	"
"	7944	"	"	"	"	"
"	14094	"	"	"	"	"
BRR	817	L	Clear	Scales	Scales	S. P.
"	929	"	"	"	"	"
"	615	"	"	"	"	"
"	900	"	"	"	"	"
"	508	"	"	"	"	"
"	526	"	"	"	"	"
"	521	"	"	"	"	"
"	504	"	"	"	"	"
BRR	513	"	Clear	Scales	Scales	S. P.
"	827	"	"	"	"	"
"	740	"	"	"	"	"
"	824	"	"	"	"	"
"	909	"	"	"	"	"
"	807	"	"	"	"	"
"	707	"	"	"	"	"

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	726	L	Scales	S. P.	....	
"	621	"	"	"	....	..
"	528	"	"	"	....	..
[fol. 575]						
BRR	712	L	Scales	S. P.	....	..
"	813	"	"	"	.. ..	.. ..
"	800	"	"	"	.. ..	.. ..
"	919	"	"	"	.. ..	.. ..
"	907	"	"	"	.. ..	.. ..
"	721	"	"	"	.. ..	.. ..
"	825	"	"	"	.. ..	.. ..
"	913	"	Clear	Scales	Scales	S. P.
"	710	"	"	"	"	"
"	700	"	"	"	"	"
"	811	"	"	"	"	"
"	706	"	"	"	"	"
"	605	"	"	"	"	"
"	818	"	"	"	"	"
"	916	"	"	"	"	"
"	911	"	"	"	"	"
"	713	"	"	"	"	"
"	620	"	"	"	"	"
"	614	"	"	"	"	"

"							
"	922	"	"	"	"	"	
L&A	928	"	"	"	"	"	
GHSA	2524	"	B. C. L.	Scales	Scales	KCS	
"	38158	"	"	"	"	H. T.	
UP	50571	"	"	"	"	"	
SP	79137	"	"	"	"	"	
GHSA	21253	"	"	"	"	"	
IC	50948	"	"	"	"	"	
NYC	159679	"	"	"	"	"	
GHSA	208799	"	"	"	"	"	
SP	50408	"	"	"	"	"	
"	26837	"	"	"	"	"	
GHSA	86339	"	"	"	"	S. P.	
"	35677	"	"	"	"	"	
SP	50140	"	"	"	"	"	
"	27255	"	"	"	"	"	
CORX	25254	"	"	"	"	"	
"	218	E	Oil Pit	Scale Track	Scale Track	KCS	
"	467	"	"	"	"	"	
SPAX	446	"	"	"	"	"	
"	348	"	"	"	"	"	
"	513	"	"	"	"	"	
"	471	"	"	"	"	"	
"	430	"	"	"	"	"	
"	367	"	"	"	"	"	
"	480	"	"	"	"	"	
"	302	"	"	"	"	"	

Detail Record of Seven-day Test, etc.—Continued

[fol. 576]

Initials	Number	L or E	From	To	From	To
INOX	578	E	Oil Pit	Scale Track	Scale Track	K. C. S.
GATX	18207	"	"	"	"	"
MI&T	33238	L	S. P.	H. T.	. . . .	. . . .
BRR	731	L	Clear	Scales	Scales	S. P.
"	803	"	"	"	"	"
"	730	"	"	"	"	"
"	905	"	"	"	"	"
"	921	"	"	"	"	"
"	915	"	"	"	"	"
"	918	"	"	"	"	"
"	826	"	"	"	"	"
"	604	"	"	"	"	"
"	609	"	"	"	"	"
"	702	"	"	"	"	"
"	901	"	"	"	"	"
"	819	"	"	"	"	"
"	600	"	"	"	"	"
"	723	"	"	"	"	"
"	806	"	"	"	"	"
"	507	"	"	"	"	"
"	704	"	"	"	"	"
"	518	"	"	"	"	"

Detail Record of Seven-day Test, etc.—Continued

[fol. 577]

Initials	Number	L or E	From	To	From	To
INOX	1036	L	KCS	Oil Pit		
LORX	202	"	"	"		
NYC	209439	"	"	Warehouse		
			Date: May 24th, 1924			
			Engine #10			
CORX	475	E	Oil Pit	Scale Track	Scale Track	K. C. S.
"	316	"	"	"	"	"
"	337	"	"	"	"	"
"	320	"	"	"	"	"
"	472	"	"	"	"	"
"	461	"	"	"	"	"
"	291	L	Scale Track	Oil Pit		
"	414	"	"	"		
"	239	"	"	"		
"	200	"	"	"		
"	312	"	"	"		
"	359	"	"	"		
"	464	"	"	"		

"	358	"	"	"	.....	.....
"	454	"	"	"	.....	.....
"	483	"	"	"	.....	.....
LORX	527	"	"	"	.....	.....
"	456	"	"	"	.....	.....
"	180	"	"	"	.....	.....
"	299	"	"	"	.....	.....
"	439	"	"	"	.....	.....
"	177	"	"	"	.....	.....
INOX	545	"	"	"	.....	.....
LORX	285	"	"	"	.....	.....
"	282	"	"	"	.....	.....
"	204	"	"	"	.....	.....
INOX	1036	"	"	"	.....	.....
LORX	202	"	"	"	.....	.....
BRR	809	E	S. P.	H. T.	.....	.....
"	505	"	"	"	.....	.....
"	715	"	"	"	.....	.....

[fol. 578]

BRR	737	E	S. P.	H. T.	.....	.....
"	516	"	"	"	.....	.....
"	622	"	"	B. O.	.....	.....
"	724	"	"	H. T.	.....	.....
"	917	"	"	"	.....	.....
"	920	"	"	"	.....	.....

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	703	E	S. P.	H. T.	.....	.....
"	733	"	"	B. O.	.....	.....
"	823	"	"	H. T.	.....	.....
"	835	"	"	"	.....	.....
"	925	"	"	B. O.	.....	.....
"	524	"	"	H. T.	.....	.....
"	726	"	"	"	.....	.....
"	804	"	"	"	.....	.....
"	812	"	"	B. O.	.....	.....
"	821	"	"	H. T.	.....	.....
"	810	"	"	"	.....	.....
"	619	"	"	"	.....	.....
"	503	"	"	"	.....	.....
"	510	"	"	"	.....	.....
"	519	"	"	"	.....	.....
"	727	"	"	"	.....	.....
"	501	"	"	"	.....	.....
"	924	"	"	"	.....	.....
"	927	"	"	"	.....	.....
"	910	"	"	"	.....	.....
"	808	"	"	"	.....	.....
"	616	"	"	"	.....	.....
"	607	"	"	"	.....	.....

"						
"	742	"	"	"	.....	.....
"	711	"	"	"	.....	.....
"	716	"	"	"	.....	.....
"	522	"	"	"	.....	.....
"	601	"	"	"	.....	.....
"	904	"	"	"	.....	.....
"	611	"	"	"	.....	.....
"	926	"	"	"	.....	.....
"	920	"	"	"	.....	.....
"	512	"	"	"	.....	.....
"	741	"	"	"	.....	.....
"	714	"	"	"	.....	.....
"	744	"	"	"	.....	.....
"	814	"	"	B. O.	.....	.....
"	801	"	"	"	.....	.....
"	612	"	"	H. T.	.....	.....
"	729	"	"	"	.....	.....
				"	.....	.....
[fol. 579]						
BRR	617	E	S. P.	H. T.		
"	511	"	"	"	.....	.....
"	717	"	"	"	.....	.....
"	734	L	Clear	Scales	Scales	S. P.
"	725	"	"	"	"	"
"	828	"	"	"	"	"
"	728	"	"	"	"	"

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	Lot E	From	To	From	To
BRR	515	L	Clear	Scales	Scales	S. P.
"	722	"	"	"	"	"
"	608	"	"	"	"	"
"	902	"	"	"	"	"
"	912	"	"	"	"	"
"	908	"	"	"	"	"
"	802	"	"	"	"	"
SP	23134	"	S. P.	Warehouse		
BRR	530	"	Clear	Scales	Scales	S. P.
"	815	"	"	"	"	"
"	613	"	"	"	"	"
"	718	"	"	"	"	"
"	805	"	"	"	"	"
"	705	"	"	"	"	"
"	903	L	"	"	"	"
"	527	"	"	"	"	"
"	610	"	"	"	"	"
ML&T	33238	E	H. T.	S. P.		
SOU	166507	L	"	"		
NYC	209439	E	"	Scales	Scales	B. C. L.
GHSA	38158	L	H. T. 2	S. P.		
"	50571	"	"	"		
SP	21253	"	"	"		

GHSA	50048	"	"	"					
IC	1506679	"	"	"					
GHSA	50408	"	"	"					
NYC	2087599	"	"	"	Scale Track	Scale Track	K. C. S.		
CORX	454	E	Oil Pit	"	"	"	"		
"	483	"	"	"	"	"	"		
LORX	527	"	"	"	"	"	"		
"	456	"	"	"	"	"	"		
"	180	"	"	"	"	"	"		
"	269	"	"	"	"	"	"		
"	439	"	"	"	"	"	"		
"	177	"	"	"	"	"	"		
INOX	545	"	"	"	"	"	"		
LORX	285	"	"	"	"	"	"		
"	282	"	"	"	"	"	"		
[fol. 580]									
LORX	204	E	Oil Pit	Scale Track	Scale Track	K. C. S.			
BRR	703	L	Clear	"	Scales	"			
"	823	"	"	"	"	"			
"	735	"	"	"	"	"			
"	525	"	"	"	"	"			
"	524	"	"	"	"	"			
"	726	"	"	"	"	"			
"	804	"	"	"	"	"			
"	821	"	"	"	"	"			

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	810	L	Clear	Scales	Scales	K. C. S.
"	619	"	"	"	"	"
"	503	"	"	"	"	"
"	727	"	"	"	"	"
"	519	"	"	"	"	"
"	510	"	"	"	"	"
SP	23134	E	Warehouse	B. C. L	B. C. L.	S. P.
BRR	715	L	Clear	Scales	Scales	S. P.
"	737	"	"	"	"	S. P.
"	516	"	"	"	"	"
"	622	"	"	"	"	"
"	724	"	"	"	"	"
"	917	"	"	"	"	"
"	720	"	"	"	"	"
LORX	202	E	K. C. S.	Oil Pit		
INOX	1036	"	"	"	"	"
CORX	358	"	"	"	"	"
"	464	"	"	"	"	"
"	359	"	"	"	"	"
"	312	"	"	"	"	"
"	200	"	"	"	"	"
"	239	"	"	"	"	"
"	239	"	"	"	"	"

"	414	"	"	"	"	"
"	291	"	"	"	"	"
GATX	10980	L	K. C. S.	Oil Pit	.....	.....
"	29127	"	"	"	"	"
"	11065	"	"	"	"	"
"	4486	"	"	"	"	"
"	10695	"	"	"	"	"
"	11009	"	"	"	"	"
"	9073	"	"	"	"	"
"	14728	"	"	"	"	"
"	20370	"	"	"	"	"
LORX	310	"	"	"	"	"
INOX	936	"	"	"	"	"
GATX	16075	"	"	"	"	"

[fol. 581]

SPAX	314	L	K. C. S.	Oil Pit		
"	415	"	"	"	.....	.....
"	339	"	"	"	.....	.....
"	540	"	"	"	.....	.....
"	336	"	"	"	.....	.....
"	324	"	"	"	.....	.....
"	343	"	"	"	.....	.....
"	424	"	"	"	.....	.....
"	412	"	"	"	.....	.....
CORX	242	"	"	"	.....	.....

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
KCS	15551	E	K. C. S.	Scales		
RI	43283	"	"	"		
KCS	16005	"	"	"		
WAB	80909	"	"	"		
KCS	16041	"	"	"		
CB&Q	95378	"	"	"		
PMcK&Y	81385	"	"	"		
KCS	15078	"	"	"		
UP	125765	"	"	"		
UP	125926	"	"	"		
KCS	16027	"	"	"		
BRR	910	L	Clear	Scales	Scales	S. P.
"	927	"	"	"	"	"
"	924	"	"	"	"	"
"	501	"	"	"	"	"
"	601	"	"	"	"	"
"	522	"	"	"	"	"
"	716	"	"	"	"	"
"	711	"	"	"	"	"
"	742	"	"	"	"	"
"	607	"	"	"	"	"
"	616	L	"	"	"	"
"	808	"	"	"	"	"

"						
"	611	"	"	"	"	"
"	904	"	"	"	"	"
"	714	"	"	"	"	"
"	741	"	"	"	"	"
"	512	"	"	"	"	"
"	920	"	"	"	"	"
"	926	"	"	"	"	"
"	809	"	"	"	"	"
"	505	"	"	"	"	"
"	729	"	"	"	"	"
"	801	"	"	"	"	"

[fol. 582]

Date: May 25th, 1924

Engine #10

No Work

Date: May 26th, 1924

Engine #10

BRR	504	E	S. P.	H. T.	.....	.....
"	521	"	"	"	.....	.....
"	526	"	"	"	.....	.....
"	508	"	"	"	.....	.....
"	700	"	"	"	.....	.....

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	710	E	S. P.	H. T.	.....	.....
"	913	"	"	"	.....	.....
"	707	"	"	Bin	.....	.....
"	807	"	"	"	.....	.....
"	909	"	"	"	.....	.....
"	916	"	"	"	.....	.....
"	818	"	"	"	.....	.....
"	605	"	"	"	.....	.....
"	706	"	"	"	.....	.....
"	811	"	"	"	.....	.....
"	523	"	"	"	.....	.....
"	517	"	"	"	.....	.....
"	518	"	"	"	.....	.....
"	704	"	"	"	.....	.....
"	507	"	"	"	.....	.....
"	806	"	"	"	.....	.....
"	743	"	"	"	.....	.....
GATX	20370	"	Side Track	K. C. S.	.....	.....
LORX	310	"	"	"	.....	.....
INOX	936	"	"	"	.....	.....
GATX	16075	"	"	"	.....	.....
SPAX	314	"	"	"	.....	.....

[fol. 583]

SPAX	415	E	Side Track	K. C. S.	.....	.....
"	339	"	"	"	.....	.....
"	540	"	"	"	.....	.....
"	336	"	"	"	.....	.....
"	324	"	"	"	.....	.....
"	343	"	"	"	.....	.....
KCS	15551	"	"	"	.....	.....
RI	43283	"	"	"	B. C. L.	.....
KCS	16005	"	"	"	.....	.....
WAB	80909	"	"	"	.....	.....
KCS	16041	"	"	"	.....	.....
CB&Q	95378	"	"	"	.....	.....
PMcK&Y	81385	"	"	"	.....	.....
KCS	15078	"	"	"	.....	.....
UP	125765	"	"	"	.....	.....
UP	125926	"	"	"	.....	.....
KCS	16027	"	"	"	.....	.....
UP	79137	L	H. T. 2	S. P.	.....	.....
BRR	820	E	S. P.	H. T.	.....	.....
"	603	"	"	"	.....	.....
"	732	"	"	"	.....	.....
"	618	"	"	"	.....	.....
"	606	"	"	"	.....	.....
"	918	"	"	"	.....	.....
"	915	"	"	"	.....	.....
					.....	.....

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	928	E	S. P.	H. T.	.....	.....
"	922	"	"	"	.....	.....
"	614	"	"	"	.....	.....
"	620	"	"	"	.....	.....
"	713	"	"	"	.....	.....
"	911	"	"	"	.....	.....
"	723	"	"	"	.....	.....
"	609	"	"	"		

"	819	"	"	"	.....	.....
"	901	"	"	"	.....	.....
"	826	"	"	"	.....	.....
"	604	"	"	"	.....	.....
"	699	"	"	"	.....	.....
"	702	"	"	"	.....	.....
"	513	"	"	"	.....	.....
"	827	"	"	"	.....	.....
"	740	"	"	"	.....	.....
"	824	"	"	"	.....	.....
"	800	"	"	"	.....	.....

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BRR	919	E	S. P.	H. T.	.....	.....
"	907	"	"	"	.....	.....

"	721	"	"	"	.....	.....
"	825	"	"	"	.....	.....
"	817	"	"	"	.....	.....
"	929	"	"	"	.....	.....
"	615	"	"	"	.....	.....
"	900	"	"	"	.....	.....
"	602	"	"	"	.....	.....
SP	16540	"	"	Scale	Scale	H. T.
"	22908	"	"	"	"	"
"	21276	"	"	"	"	"
H&TC	26715	"	"	"	"	"
SP	34755	"	"	"	"	"
"	27658	"	"	"	"	"
"	20580	"	"	"	"	"
H&TC	52039	"	"	"	"	"
SP	17077	"	"	"	"	"
H&TC	37091	"	"	"	"	"
SL&SF	50548	"	"	"	"	"
W&LE	52134	L	"	"	"	B. C. L
"	53837	"	"	"	"	Warehouse
"	53540	"	"	"	"	"
RI	43283	"	B. C. L.	"	"	"
KCS	15551	"	"	"	"	K. C. S.
"	16041	"	"	"	"	"
WAB	80909	"	"	"	"	"
KCS	16005	"	"	"	"	"

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
CB&Q	95378	L	B. C. L.	Scale	Scale	K. C. S.
SL&SF	30548	"	"	"	"	S. P.
BRR	605	"	Clear	"	"	K. C. S.
"	818	"	"	"	"	S. P.
"	916	"	"	"	"	"
"	909	"	"	"	"	"
"	807	"	"	"	"	"
"	707	"	"	"	"	"
"	511	"	"	"	"	"
"	617	"	"	"	"	"
"	612	"	"	"	"	"
GATX	10980	E	Oil Pit	"	"	K. C. S.
"	29127	"	"	"	"	"
"	11065	"	"	"	"	"
"	4486	"	"	"	"	"
"	10695	"	"	"	"	"
"	11009	"	"	"	"	"
[fol. 585]						
GATX	9073	E	Oil Pit	Scale	Scale	K. C. S.
"	14728	"	"	"	"	"
SPAX	424	"	"	"	"	"
"	412	"	"	"	"	"

"	242	"	"	"	"	"	
BRR	928	L	Clear	"	"	S. P.	
"	915	"	"	"	"	"	
"	918	"	"	"	"	"	
"	606	"	"	"	"	"	
"	618	"	"	"	"	"	
"	732	"	"	"	"	"	
"	603	"	"	"	"	"	
"	743	"	"	"	"	"	
"	806	"	"	"	"	"	
"	507	"	"	"	"	"	
"	704	"	"	"	"	"	
"	518	"	"	"	"	"	
"	517	"	"	"	"	"	
"	523	"	"	"	"	"	
"	811	"	"	"	"	"	
"	706	"	"	"	"	"	
"	922	"	"	"	"	"	
SL&SF	30548	"	S. P.	K. C. S.			
GATX	20945	"	K. C. S.	Oil Pit			
"	14895	"	"	"			
"	14311	"	"	"			
INOX	994	"	"	"			
GATX	13064	"	"	"			
"	9276	"	"	"			
"	16239	"	"	"			

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
GATX	21543	L	K. C. S.	Oil Pit		
"	13760	"	"	"		
"	8803	"	"	"		
SPAX	345	"	"	"		
"	340	"	"	"		
"	310	"	"	"		
"	486	"	"	"		
CORX	409	"	"	"		
"	136	"	"	"		
"	353	"	"	"		
"	455	"	"	"		
"	315	"	"	"		
"	236	"	"	"		
"	161	"	"	"		
"	460	"	"	"		
[fol. 586]						
CORX	445	L	K. C. S.	Oil Pit		
"	357	"	"	"		
"	425	"	"	H. T. 2		
"	354	"	"	"		
"	215	"	"	"		
"	274	"	"	"		

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Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	800	L	Clear	Scales	Scales	S. P.
"	919	"	"	"	"	"
"	907	"	"	"	"	"
"	721	"	"	"	"	"
"	825	"	"	"	"	"
"	817	"	"	"	"	"
"	929	"	"	"	"	"
"	———	"	"	"	"	"
"	—9	"	"	"	"	"
"	503	"	"	"	"	"
[fol. 587]						
BRR	810	E	S. P.	H. T.	H. T.	Bin
"	619	"	"	"	"	"
"	503	"	"	"	"	"
"	510	"	"	"	"	"
"	715	"	"	"	"	"
"	611	"	"	"	"	"
"	610	"	"	"	"	"
"	823	"	"	"	"	"
"	735	"	"	"	"	"
"	525	"	"	"	"	"
"	524	"	"	"	"	"

"		726	"	"	"	"	"
"		804	"	"	"	"	"
"		716	"	"	"	"	"
"		711	"	"	"	"	"
"		742	"	"	"	"	"
"		607	"	"	"	"	"
"		616	"	"	"	"	"
"		808	"	"	"	"	"
"		516	"	"	"	"	"
"		622	"	"	B. O.	.....	.....
"		724	"	"	"	.....	.....
"		917	"	"	H. T.	.....	.....
"		720	"	"	"	.....	.....
"		927	"	"	"	.....	.....
"		501	"	"	"	.....	.....
"		601	"	"	"	.....	.....
"		914	"	"	"	.....	.....
"		915	L	"	B. O.	.....	.....
"		918	"	"	"	.....	.....
"		821	E	"	H. T.	H. T.	Bin
"		729	"	"	"	"	"
"		505	"	"	"	"	"
"		809	"	"	"	"	"
"		926	"	"	"	"	"
"		920	"	"	"	"	"
"		512	"	"	"	"	"

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	741	E	S. P.	H. T.	H. T.	Bin
"	984	"	"	"	"	"
"	737	"	"	"	"	"
SP	29831	L	"	Warehouse		
UP	125765	"	D. C. L.	Scales	Scales	K. C. S.
[fol. 588]						
KCS	15078	I	B. C. L.	Scales	Scales	K. C. S.
PM&K&Y	81385	"	"	"	"	H. T. 2
NYC	209439	"	"	"	"	"
KCS	16827	"	"	"	"	K. C. S.
UP	125926	"	"	"	"	"
H&TC	37091	"	"	"	"	S. P.
"	52039	"	"	"	"	H. T. 2
SP	17077	L	B. C. L.	Scales	Scales	S. P.
"	27658	"	"	"	"	H. T. 2
"	20580	"	"	"	"	S. P.
H&TC	36715	"	"	"	"	H. T. 2
SP	34755	"	"	"	"	"
"	22808	"	"	"	"	S. P.
"	21276	"	"	"	"	H. T. 2
"	16540	"	"	"	"	"
LORX	136	E	O. P.	Scale Track	Scale Track	K. C. S.

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[fol. 589]

Initials	Number	Load	From	To	From	To
BRR	723	L	Clear	Scales	Scales	S. P.
"	911	"	"	"	"	"
"	713	"	"	"	"	"
"	620	"	"	"	"	KCS
"	614	"	"	"	"	"
"	716	"	"	"	"	S. P.
"	711	"	"	"	------	
"	742	"	"	"	------	
"	697	"	"	"	------	
"	616	"	"	"		
"	808	"	"	"	------	
"	516	"	"	"	------	
CORX	357	E	O. P.	Scale Track	Scale Track	KCS
"	445	"	"	"	"	"
"	460	"	"	"	"	"
"	161	"	"	"	"	"
"	236	"	"	"	"	"
"	315	"	"	"	"	"
"	455	"	"	"	"	"
"	353	"	"	"	"	"
INOX	994	"	"	"	"	"
GATX	14311	"	"	"	"	"

"	14805	"	"	"	"	"
"	29945	"	"	"	"	"
CORX	317	L	H. T. 2	O. P.	..	.. ..
"	331	"	"	"	..	....
"	219	"	"	"	..	....
"	283	"	"	"	..	....
"	137	"	"	"	..	....
"	146	"	"	"	..	....
"	451	"	"	"	..	....
"	274	"	"	"	..	....
"	215	"	"	"	..	....
"	354	"	"	"	..	....
"	425	"	"	"	..	....
BRR	510	"	Clear	Scales	Scales	S. P.
"	715	"	"	"	"	"
"	611	"	"	"	"	"
"	610	"	"	"	"	"
"	823	"	"	"	"	"
"	726	"	"	"	"	"
"	735	"	"	"	"	"
"	525	"	"	"	"	"

[fol. 590]

BRR	524	L	Clear	Scales	Scales	S. P.
"	804	"	"	"	"	"
"	729	"	"	"	"	"

Detail Record of Seven-day Test, etc.—Continued

Initials	Number	L or E	From	To	From	To
BRR	821	L	Clear	Scales	Scales	S. P.
"	810	"	"	"	"	"
"	619	"	"	"	"	"
"	503	"	"	"	"	"
W&LE	53837	E	H. T.	"	"	"
SP	29831	"	"	S. P.		
BRR	737	L	Clear	Scales	Scales	S. P.
"	804	"	"	"	"	"
"	741	"	"	"	"	"
"	512	"	"	"	"	"
"	920	"	"	"	"	"
"	809	"	"	"	"	"
"	505	"	"	"	"	"
"	744	"	"	"	"	"
"	719	"	"	"	"	"
"	816	"	"	"	"	"
CORN	317	E	O. P.	KOS		
"	331	"	"	"		
"	219	"	"	"		
"	283	"	"	"		
"	137	"	"	"		
"	146	"	"	"		
"	451	"	"	"		

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[fol. 591] Time of Yard Locomotive No. 9 and Road Locomotive No. 10 Spent in Each Zone Each Day During the Test Period, May 21 to May 27, 1924, Inclusive.

Yard Locomotive No. 9: Time spent in each zone each day, shown in minutes:

Date	Zone 1, Yard zone	Zone 2, S. P. connection	Zone 3, Weighing zone	Zone 4, K. C. S. running zone	Zone 5, K. C. S. connection	All zones
May 21, 1924	492					492
May 22	513					513
May 23	515					515
May 24	493					493
May 25 (Sunday)	435		32	13		480
May 26	527					527
May 27	503					503
Total Test Period	3,478		32	13		3,523

Road Locomotive No. 10: Time spent in each zone each day, shown in minutes

Date	Zone 1, yard zone	Zone 2, S. P. connection	Zone 3, Weighing zone	Zone 4, K. C. S. running zone	Zone 5, K. C. S. connection	All zones
May 21, 1924	162	70	138	37	73	480
May 22	156	82	144	17	81	480
May 23	141	71	155	45	145	557
May 24	185	79	139	42	95	540
May 25 (Sunday)	No work performed on Sunday.					
May 26	166	98	115	24	77	480
May 27	181	65	157	18	59	480
Total Test Period	991	465	848	183	530	3,017

[fol. 502] Summary of Time of Yard Locomotive No. 9 During Test Period Divided Between Common Carrier Switching and Intraplant Switching

Date	Common carrier switching (minutes)	Intraplant switching (minutes)	Miscellaneous—Taking fuel, water, going to and returning from work. Apportioned pro rata to common carrier switching and intraplant switching: Total miscellaneous time (minutes)	Miscellaneous time apportioned to: Common carrier switching (minutes)	Miscellaneous time apportioned to: Intraplant switching (minutes)	Total common carrier switching (minutes)	Total intraplant switching (minutes)	Total time all services (minutes)
May 21, 1924	33	424	35	3	32	36	456	492
May 22	42	450	21	2	19	44	469	513
May 23	63	433	19	2	17	65	450	515
May 24	54	415	24	3	21	57	436	493
May 25 (Sunday)	120	348	12	3	9	123	357	480
May 26	23	458	46	2	44	25	502	527
May 27	25	450	28	2	26	27	476	503
Totals	360	2,978	185	17	168	377	3,146	3,523

Detail Record of Seven-day Test, etc.—Continued

[Fol. 593] Time of Yard Locomotive No. 9 Spent in Each Zone During Test Period Divided Between Common Carrier Switching and Intraplant Switching

Yard Locomotive No. 9: Time Spent in Each Service in Each Zone During Test Period, Shown in Minutes

Date	Zone 1, Yard zone			Zone 2, S. P. connection	Zone 3, Weighing zone, common carrier switching	Zone 4, K. C. S. running zone, common carrier switching	Zone 5, K. C. S. connection	All zones		
	Common carrier switching	Intraplant switching	Total, zone 1					Common carrier switching	Intraplant switching	Total
May 21, 1924	36	456	492					36	456	492
May 22	44	469	513					44	469	513
May 23	65	450	515					65	450	515
May 24	57	436	493					57	436	493
May 25 (Sun.)	78	357	435		32	13		123	357	480
May 26	25	502	527					25	502	527
May 27	27	476	503					27	476	503
Total Test Period	332	3,146	3,478		32	13		377	3,146	3,523

[fol. 595] Summary Showing Number of Loaded Cars Handled b
Time Consumed in

Zone number and description	Locomotive No. (see note)	Cars
1. Yard zone (Union Sulphur Company yard)	10	88
	9	
2. Southern Pacific Connection	10	53
3. Weighing zone	10	79
4. Running zone for all K. C. S. and some S. P. movements	10	31
	9	
5. Kansas City Southern Connection	10	16
Total—All zones		

Note.—Locomotive No. 10 is a road locomotive. This locomo
the Union Sulphur Company plant does not load sulphur on Sund
Locomotive No. 9 is a yard locomotive. This locomotive per
tracks and facilities of the Union Sulphur Company. On Sunday,
may be required.

ed by Brimstone Railroad & Canal Company During Seven Day Test, May 21 to May 27, 1924, Inclusive; Total Locomotive
d in Common Carrier Transportation Service; and Average Time per Car per Zone

May 21		May 22		May 23		May 24		May 25 (Sunday)		May 26		May 27		Total		Average minutes per car per zone
Cars	Minutes	Cars	Minutes	Cars	Minutes	Cars	Minutes	Cars	Minutes	Cars	Minutes	Cars	Minutes	Cars	Minutes	
88	162	62	156	109	141	88	185			85	166	95	181	527	991 / 261 \	2 37571
	36		44		65		57		7		25		27			
53	70	55	82	69	71	71	79			54	98	60	65	362	465	1.28453
79	138	50	144	67	155	65	139			61	115	69	157	391	848	2.16880
31	37	16	17	42	45	24	42			43	24	18	18	174	183 / 13 \	1.12644
									13							
16	73	16	81	42	145	24	95			43	77	18	59	159	530	3.33333
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
	516		524		622		597		20		505		507	527	3,291	6.24478

omotive performs road haul work and train switching, including weighing cars. This locomotive did not work on May 25, as
Sundays.

performs yard switching, including intraplant switching, within the limits of the Yard Zone (No. 1), which embraces the plant,
day, when the road locomotive is not on duty, this locomotive does such switching outside of the limits of the Yard Zone as

[fol. 594] Time of Yard Locomotive No. 9 Spent in Common Carrier Switching During Test Period Divided Between Transportation Service and Miscellaneous Carrier Service

Yard Locomotive No. 9: Time spent in transportation service and miscellaneous carrier service, shown in minutes

Date	Zone 1, Yard zone			Zone 2, S. P. connection	Zone 3, Weighing zone, miscellaneous carrier service	Zone 4, K. C. S. running zone, transportation service	Zone 5, K. C. S. connection	All zones		
	Transportation service	Miscellaneous carrier service	Total carrier switching zone 1					Transportation service	Miscellaneous carrier service	Total common carrier switching, all zones
May 21, 1924	36		36							36
May 22	44		44							44
May 23	65		65							65
May 24	57		57							57
May 25 (Sunday)	7	(a) 71	78		(b) 32	13				123
May 26	25		25							25
May 27	27		27							27
Total Test Period	261	(a) 71	332		(b) 32	13				377

(a) Includes time spent in taking fuel oil for locomotive No. 12, getting lubricating oil, and oiling and repairing locomotive No. 12.
(b) Time spent in pumping water from track scales.

(Here follows side folio page 595)

[fol. 596] Summary showing average time consumed per loaded car interchanged with the Southern Pacific and Kansas City Southern Connections, respectively, during the test period, May 21 to May 27, 1924, inclusive

Average Time per Loaded Car Interchanged with Southern Pacific

			Total time consumed, minutes
8 cars (in)	X 3.69024	min. per car (zone 2-1)	29.28192
4 " "	X 5.82904	" " " (zones 2-3-1)	23.31616
334 " (out)	X 5.82904	" " " (zones 1-3-2)	1,946.89936
15 " "	X 6.95548	" " " (zones 1-4-3-2)	104.33220
1 " "	X 5.82904	" " " (zones 1-3-2 [Hold track])	5.82904
6 " "	X 4.54451	" " " (zones 1-3)	27.26706
368 cars total		Total time	2,136.92574
Average time per loaded car			5.80686 Minutes.

Average Time per Loaded Car Interchanged with Kansas City Southern

128 cars (in)	X 6.83548	min. per car (zones 5-4-1)	874.94144
31 " (out)	X 9.00428	" " " (zones 1-3-4-5)	279.13268
159 cars total		Total time	1,154.07412
Average time per loaded car			7.25833 Minutes.

Average Time per Loaded Car Interchanged with Both Connections

Total loaded cars	527	Total time consumed	3,291 Minutes.
Average time per loaded car			6.24478 Minutes.

[fol. 597] EXHIBIT No. A-3

[fol. 598] EXHIBIT No. 3

Filed: Nov. 19, 1926. W. E. Lee, Clerk, U. S. District Court Western District of Louisiana

Docket No. 12969—Divisions received by Brimstone Railroad & Canal Company

Operating Revenues and Expenses of the Brimstone Railroad & Canal Company for Calendar years 1921, 1922 and 1923, as shown by the carrier's books of account

[fol. 599] Statement A

Docket No. 12969

Brimstone Railroad & Canal Company

Operating Revenues and Expenses for Calendar Years 1921, 1922 and 1923, as Shown by the Carrier's Books of Account

Item	Calendar year 1921	Calendar year 1922	Calendar year 1923
Railway operating revenues:			
Freight	$214,027 53	$271,269 02	$293,851 36
Demurrage	329 00	553 00	593 30
Total railway operating revenues	214,356 53	271,822 02	294,444 66

Statement A—Continued

Item	Calendar year 1921	Calendar year 1922	Calendar year 1923
Railway operating expenses:			
Maintenance of way and structures	15,608 87	30,962 54	36,244 15
Maintenance of equipment	69,363 66	64,311 02	89,984 08
Traffic	15,426 76	17,379 26	16,704 56
Transportation—Rail line	22,909 71	26,681 10	45,106 69
General	19,800 97	23,871 55	24,559 86
Total railway operating expenses	142,309 97	163,205 47	212,599 34
Net revenue from railway operations	72,036 56	108,616 55	81,845 32
Railway tax accruals	21,303 80	25,148 72	24,928 89
Railway operating income	50,732 76	83,467 83	56,916 43
Hire of freight cars—Credit balance	9,511 80	18,167 95	22,035 34
Gross income	60,244 56	101,635 78	78,951 77
Rent for locomotives		1,862 77	594 13
Joint facility rents		4,951 90	3,289 34
Net railway operating income	60,244 56	94,821 11	75,068 30

[fol. 600]

Statement B

Docket No. 12969

Brimstone Railroad & Canal Company

Operating Expenses by Primary Accounts and Subdivisions for Calendar Years 1921, 1922 and 1923, as Shown by the Carrier's Books of Account

Account No.	Item	Calendar year 1921	Calendar year 1922	Calendar year 1923
	Maintenance of way and structures:			
1201	Superintendence	$799 92	$2,385 78	$2,301 72
1202	Maintaining roadway and track:			
	Roadway maintenance	364 50	76 00	65 38
	Ties	1,189 49	3,373 25	4,032 74
	Rail	623 01	904 98	2,988 51
	Other track material	49 13	689 09	1,966 12
	Tracklaying and surfacing	12,075 68	12,427 31	8,875 09
	Total maintenance of roadway and track	14,301 81	17,470 63	17,927 84

Statement B—Continued

Account No.	Item	Calendar year 1921	Calendar year 1922	Calendar year 1923
1203	Maintaining track structures	143 91		
1204	Maintaining ancillary structures	240 47	146 19	1,560 87
1205	Depreciation of way and structures			16 33
1207	Other way and structure expense	122 76	176 22	665 24
	Total of accounts Nos. 1201 to 1207 inclusive	15,608 87	20,178 82	22,472 00
1208	Maintaining joint tracks, yards and other facilities—Dr.		10,783 72	13,772 15
	Total maintenance of way and structures	15,608 87	30,962 54	36,244 15
	Maintenance of equipment:			
1221	Superintendence	1,942 32	1,847 48	1,813 45
1222	Repairs of machinery and other apparatus			84 35
1223	Depreciation of machinery and other apparatus			313 59
1224	Locomotive repairs	7,266 33	7,098 72	8,974 26
1225	Locomotive depreciation and retirements	1,267 32	588 96	1,301 56
1226	Car repairs	23,571 09	18,726 54	36,319 13

1227 Car depreciation and retirements:			
Freight train cars—Depreciation	35,091 60	36,040 20	33,073 50
Freight train cars—Retirements	225 00		8,100 92
Total car depreciation and retirements	35,316 60	36,040 20	41,174 42
1235 Other equipment expenses		9 12	3 32
Total maintenance and equipment	69,363 66	64,311 02	89,984 08

[fol. 601]

1251 Traffic:			
Superintendence	$15,024 24	$16,914 39	$15,984 23
Advertising			
Traffic associations	11 22	25 00	25 00
Stationery and printing	391 30	439 87	695 33
Total traffic expenses	15,426 76	17,379 26	16,704 56

Account No.	Item	Calendar year 1921	Calendar year 1922	Calendar year 1923
	Transportation—Rail line:			
1261	Superintendence and dispatching	385 58	2,124 47	333 53
1262	Station service:			
	Station employees	2,025 00	2,580 00	5,838 85
	Weighing, inspection and demurrage bureaus	153 00	120 00	124 00
	Station supplies and expenses	48 06	439 59	508 72
	Total station service	2,826 06	3,139 59	6,471 57
1264	Other yard employees		1,200 00	1,200 00
1270	Train enginemen and motormen	*3,638 74	3,262 96	6,255 64
1271	Fuel for train locomotives	4,599 49	6,443 89	16,603 00
1273	Other train locomotive supplies and expenses:			
	Water for train locomotives		600 00	1,000 00
	Other supplies for train locomotives	142 92	552 92	601 06
	Enginehouse expenses—Train	2,240 25	3,066 82	3,333 11
	Total other train locomotive supplies and expenses	2,383 17	4,219 74	4,934 17
1274	Trainmen	7,460 39	5,610 86	8,119 53
1275	Train supplies and expenses	511 42	184 06	199 16

*Yardmaster's salary ($1,200.00) included in account 1270 in 1921.

1277	Loss and damage	1 39	15 95	3 65
1278	Other casualty expenses		20 00	59 23
1279	Other rail transportation expenses	203 56	459 58	927 81
	Total transportation—Rail line	22,069 71	26,681 10	45,106 69
[fol. 602]				
	General:			
1291	Administration:			
	Salaries and expenses of general officers	$4,480 19	$4,404 82	$3,898 31
	Salaries and expenses of clerks and attendants	3,950 08	5,730 00	5,760 65
	General office supplies and expenses	319 35	791 38	912 78
	Law expenses	6,813 75	10,328 57	10,208 68
	Total administration	15,563 37	21,254 77	20,780 42
1292	Insurance General	210 11	422 85	826 21
1293	Valuation expenses	516 12	1,291 64	2,408 91
1294	Other general expenses:			
	Pensions	3,000 00		
	Stationery and printing	364 23	644 79	276 96
	Other expenses	247 14	257 50	267 36
	Total other general expenses	3,611 37	902 29	544 32
	Total general expenses	19,900 97	23,871 55	24,559 86

Statement B—Continued

Summary of Operating Expenses

Account No.	Item	Calendar year 1921	Calendar year 1922	Calendar year 1923
	Maintenance of way and structures	$15,608 87	$30,962 54	$36,244 15
	Maintenance of equipment	69,363 66	64,311 02	89,984 08
	Traffic	15,426 76	17,379 26	16,704 56
	Transportation—Rail line	22,889 71	26,681 10	45,106 69
	General	19,280 97	23,871 55	24,559 86
	Grand total railway operating expenses	142,569 97	163,205 47	212,599 34

[fol. 603] EXHIBIT No. A-4

Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

[fol. 604] Docket No. 12969—Divisions Received by Brimstone Railroad & Canal Company

This exhibit consists of two parts and an appendix, as follows:

Part I

Operating expenses, taxes, joint facility and equipment rents for calendar year 1923, as they appear on the books of the Brimstone Railroad & Canal Company, and the adjustment of these expenses made to reflect the reasonable and necessary cost of operation in that year, including the cost of intraplant switching.

Investment in road and equipment, together with materials and supplies, and cash, as of December 31, 1923, as they appear on the carrier's books, and certain minor additions thereto made necessary by the adjustment of operating expenses above.

Interest computed at 6½ per cent on investment including therewith materials and supplies and cash.

Accrued depreciation on road and equipment.

Summary of total reasonable and necessary cost of operation in 1923, including intraplant switching for Union Sulphur Company, based on expenses as above adjusted, and including interest on investment.

Part II

Separation of the total reasonable and necessary cost of operation in 1923, between common carrier service and intraplant switching, embracing formula for segregating the cost of intraplant switching, factors used in making such segregation, and summary of results.

Appendix

Agreement between the Brimstone Railroad & Canal Company and the Union Sulphur Company covering the lease to the former of certain yard tracks at Sulphur Mine, Louisiana, owned by the latter.

Request made upon the Brimstone Railroad & Canal Company for certain information to supplement the record and the carrier's answer thereto.

Part I

[fol. 606] Docket No. 12969

Statement showing operating expenses, taxes, joint facility and equipment rents of the Brimstone Railroad & Canal Company for the year ended December 31, 1923, as they appear on the books of that company, and the adjustments made of these expenses to reflect the reasonable and necessary cost of operation in that year, including intraplant switching for the Union Sulphur Company

Account No.	Item	Operating expenses as reported	Adjustments: Item No.	Adjustments: Amount	Operating expenses as adjusted
	Maintenance of way and structures:				
1201	Superintendence	$2,301 72			$2,301 72
1202	Maintaining roadway and track	7,927 84	1	—$4,066 59	13,861 52
1204	Maintaining ancillary structures	1,560 87			1,560 87
1205	Depreciation of way and structures	16 33			16 33
1207	Other way and structure expense	665 24			665 24
1208	Maintaining joint tracks, yards, and other facilities—Dr.	13,772 15	2	—6,280 85	7,491 30
	Total maintenance of way and structures	36,244 15		—10,347 44	25,896 71

	Maintenance of equipment:				
1221	Superintendence	1,813 45			1,813 45
1222	Repairs of machinery and other apparatus	84 35			84 35
1223	Depreciation of machinery and other apparatus	313 59			313 59
1224	Locomotive repairs	8,974 26	3	—5,000 00	3,974 26
1225	Locomotive depreciation and retirements	1,301 56	4	5,427 33	6,728 89
1226	Car repairs	36,319 13	5	—3,450 00	29,763 89
			6	—3,105 24	
1227	Car depreciation and retirements	41,174 42	7	—7,517 45	33,656 97
1235	Other equipment expenses	3 32			3 32
	Total maintenance of equipment	89,984 08		—13,645 36	76,338 72
	Traffic:				
1251	Traffic expenses	16,704 56	8	—13,277 86	3,426 70
	Transportation—rail line:				
1261	Superintendence and dispatching	333 53			333 53
1262	Station service	6,471 57			6,471 57
1264	Other yard employees	1,200 00			1,200 00
1270	Train enginemen and motormen	6,255 64			6,255 64
1271	Fuel for train locomotives	16,603 00			16,603 00
1273	Other train locomotive supplies and expenses	4,934 17			4,934 17

Statement Showing Operating Expenses, Taxes, Joint Facility and Equipment Rents of the Brimstone Railroad & Canal Company for the Year Ended December 31, 1923, etc.—Continued

Account No	Item	Operating expenses as reported	Adjustments Item No	Adjustments Amount	Operating expenses as adjusted
1274	Trainmen	8,119 53			8,119 53
1275	Train supplies and expenses	199 16			199 16
1277	Loss and damage	3 05			3 05
1278	Other casualty expenses	59 23			59 23
1279	Other rail transportation expenses	927 81			927 81
	Total transportation—rail line	45,106 69			45,106 69

[fol. 607]

Docket No. 12969

Statement Showing Operating Expenses, Taxes, Joint Facility and Equipment Rents of the Brimstone Railroad & Canal Company for the Year Ended December 31, 1923, etc.—Continued

	General:				
1291	Administration	$20,742 92			
1292	Insurance—general	863 71	9	—$3,999 67	
1293	Valuation expenses	2,408 91			
1294	Other general expenses	544 32			
	Total general expenses	24,559 86	9	—3,999 67	$20,560 19

Summary of Operating Expenses

Maintenance of way and structures	$36,244 15	$—10,347 44	$25,896 71
Maintenance of equipment	89,984 08	—13,645 36	76,338 72
Traffic	16,704 56	—13,277 86	3,426 70
Transportation—rail line	45,106 69		45,106 69
General	24,559 86	—3,999 67	20,560 19
Total railway operating expenses	212,599 34	—41,270 33	171,329 01

Operating Expenses, Taxes, Joint Facility and Equipment Rents

Item	Operating expenses as reported	Amount as reported	Amount as adjusted
Operating expenses		$212,599 34	$171,329 01
Tax accruals		24,928 89	13,821 61
Joint facility rents		3,289 34	3,289 34
Equipment rents:			
Hire of freight cars—Cr. balance	$22,035 34		
Rent for locomotives	594 13	Cr. 21,441 21	Cr. 21,441 21
Total operating expenses, taxes, joint facility and equipment rents		219,376 36	166,998 75

[fol. 608] Basis of Adjustments of the 1923 Operating Expenses of the Brimstone Railroad & Canal Company

Maintenance of Way and Structures

Account 1202—Maintaining Roadway and Track. Item No. 1, Amount $4,066.59

From October to December, 1920, the Brimstone Railroad & Canal Company relaid a portion of its road with ninety pound rail in place of sixty pound rail, and charged the entire cost to property investment. In adjusting this error in 1923 the carrier transferred the following charges from investment in road and equipment to operating expenses:

Rails	$2,410.56
Other track material	1,656.03
Total	$4,066.59

As these charges relate to another period and form no part of the actual expenses in 1923, they have been excluded in the adjustment of the 1923 expenses for the purpose of arriving at the reasonable and necessary cost of operation in that year.

[fol. 609] Account 1208—Maintaining Joint Tracks, Yards and Other Facilities—Dr. Item No. 2, Amount $6,280.85

The Brimstone Railroad & Canal Company, hereinafter called the Brimstone, uses jointly with the Union Sulphur Company, hereinafter called the proprietary company, certain yard tracks of the latter at Sulphur Mine, Louisiana, aggregating about 3.88 miles. No charge was made for the use of these tracks in 1921, but in 1922 the Brimstone paid to the proprietary company $10,783.72 for maintenance, and $4,951.90 for rental and taxes on account of the use of these tracks, these amounts being based on estimates of the valuation and maintenance of the tracks, and of the Brimstone's proportion of use which were made in connection with the respondent carriers' cost study of May 26–June 1, 1922 in this case. On January 1, 1923, a written agreement covering the joint use of these tracks was entered

into by the two companies, whereby the Brimstone leased certain of the tracks, shown in blue on the map in Exhibit No. 1, aggregating 2.76 miles, at an annual rental of $3,185.98, and assumed the entire cost of maintenance of the leased tracks. This agreement, a copy of which is included herein as an appendix to this exhibit, provides that in addition to the lease of the tracks colored in blue, the Brimstone shall have the right to use, for the same consideration recited above, certain other tracks of the proprietary company, shown on the map colored in green, for the purpose of reaching various terminal facilities, but with the understanding that the Brimstone shall not be required to maintain the tracks so colored in green.

The charges appearing on the Brimstone's books for the maintenance of the blue tracks in 1923 amounted to $13,772.15, which is equivalent to an average of $4,989.91 per mile of track. While the agreement contemplates that the Brimstone shall bear the actual cost of maintenance, investigation disclosed that in lieu thereof the maintenance in 1923 was performed by the proprietary company, which billed against the Brimstone sums aggregating $13,772.15 for this work, these charges being arbitrarily computed on the basis of 43.855 per cent of the cost of maintaining all of the proprietary company's permanent tracks. A separate record was kept by the proprietary company showing in detail the actual expense incurred in maintaining the blue tracks during the last eleven months of 1923, which amounted to $9,474.20. No separate record, however, was kept of the cost of maintaining the blue tracks in January, 1923, but assuming that a fair estimate for that month would not exceed $750.00, based on the average for February and December, 1923, the approximate actual maintenance cost of these tracks during 1923 was $10,224.20, instead of $13,772.15, or an average of $3,704.42 per mile of track.

[fol. 610] The actual cost of maintaining the blue tracks during the last eleven months of 1923, as evidenced by the records of the proprietary company, and the estimated cost of maintaining these tracks during January, 1923, based on the average of February and December, 1923, these costs together constituting the approximate total actual maintenance for the year 1923, are shown in the following table:

Maintaining joint yard tracks (colored in blue on map) 276 miles	Total labor	Ties	Rail	Other track material	Total
January, 1923					
February, 1923	$526 11	$359 40		$10 56	$896 07
March, 1923	629 37		$25 33	151 65	806 35
April, 1923	692 75	229 63		15 59	937 97
May, 1923	1,005 63	141 03	301 75	146 22	1,594 63
June, 1923	368 42	166 41		148 79	683 62
July, 1923	440 17	275 47	129 00	98 95	943 59
August, 1923	446 04	258 10	75 58	44 61	324 33
September, 1923	300 19	222 58	86 00	79 55	688 32
October, 1923	507 12	226 80	131 75	136 11	1,001 78
November, 1923	398 53	79 80		27 19	505 52
December, 1923	470 28	106 89	14 85		592 02
Total actual cost 11 months	5,784 61	2,066 11	764 26	859 22	9,474 20
Estimated cost for January, 1923, based on approx. average at February and December, 1923	500 00	235 00	8 00	7 00	750 00
Total approx. actual cost for calendar year 1923	6,284 61	2,301 11	772 26	866 22	10,224 20
Average cost per mile of track	2,277 03	833 74	279 30	313 85	3,704 42

[fol. 611] The corresponding actual costs in 1923 of labor and material involved in maintaining roadway and track on the Brimstone Division or Southern Pacific connection, and on the Lockport Division or Kansas City Southern connection, are shown in the following table:

Account 1202—Maintaining Roadway and Track—Calendar Year 1923

	Miles of all tracks	Total labor	Ties	Rail	Other track material	Total
Brimstone Division	1 85	$2,999 13	$1,174 85	*$543 55	*$303 82	*$5,021 35
Lockport Division	7 22	6,117 66	3,110 91	34 40	234 98	9,497 95
Assigned		Cr. 176 32	Cr. 253 02		Cr. 228 71	Cr 658 05
Total	9 07	$8,940 47	$4,032 74	*$577 95	*$310 09	*$13,861 25
Average per mile of all tracks		985 72	444 62	63 72	34 19	1,528 75

Disregarding the small credits to labor, ties, and other track material, shown above, which were not assigned to either the Brimstone or Lockport Divisions the following figures show the average cost in 1923 of maintaining roadway and track per mile of all tracks on various portions of the Brimstone's road:

*Charges of $2,410.56 to rail and $1,656.03 to other track material made to the 1923 expenses to adjust an accounting error in 1920, previously referred to in Item No. 1, Account 1202 "Maintaining roadway and track," which do not represent actual expenditures in 1923 have not been included above.

Average Cost of Maintaining Roadway and Track per Mile of All Tracks—Calendar Year 1923

	Total labor	Ties	Rail	Other track material	Total
Brimstone Division	$1,621 15	$635 05	$293 81	$164 23	$2,714 24
Lockport Division	317 32	430 87	4 76	32 55	1,315 50
Joint yard tracks (colored blue)	2,277 03	833 74	279 80	313 85	3,704 42
Average per mile of all tracks maintained	1,286 99	535 41	114 13	99 43	2,035 96

[fol. 612] Corresponding average costs per mile of all tracks for maintaining roadway and track in 1923 on the trunk lines with which the Brimstone connects, as well as other trunk lines traversing the same general section of country, and also all Class I Roads in the Western District, are shown in the following table:

Average Cost of Maintaining Roadway and Track per Mile of All Tracks in 1923

	Total labor	Ties	Rail	Other track material	Total
Kansas City Southern	$1,096 44	$322 18	$129 96	$127 56	$1,676 14
Louisiana Western (S. P. Lines)	849 95	513 73	209 87	243 87	1,817 42
Morgan's La. & Tex. (S. P. Lines)	932 96	399 27	88 01	154 28	1,535 52
N. O., T. & M. (Gulf Coast Lines)	797 55	283 40	126 97	99 02	1,306 94
All Class I Roads—Western District	676 41	258 66	66 27	80 41	1,081 75

The preceding figures show that the average cost on the Brimstone in 1923 of roadway and track maintenance per mile of all tracks of the Lockport Division (Kansas City Southern City connection) was substantially the same as that of the New Orleans, Texas & Mexico, Ry. (Gulf Coast Lines); that the average cost per mile of maintenance of the Brimstone Division (Southern Pacific connection) was nearly 50 per cent greater than the average cost per mile of maintenance of the Louisiana Western R. R. (Southern Pacific Lines), and nearly 62 per cent greater than the average per mile of the Kansas City Southern Ry.; and that the average cost per mile of maintenance of the joint yard tracks leased from the proprietary company was more than double the average cost per mile of maintenance of all tracks, which include main tracks as well as yard tracks, of the Louisiana Western R. R. (Southern Pacific Lines).

The extraordinary expenditures for maintenance of the joint yard tracks, in 1923 amounting to an average of $4,989.91 per mile on the basis of the Brimstone's figures, and to an average of $3,704.42 per mile on the basis of the approximate actual cost, were considered to be excessive and unrepresentative of normal yard track maintenance cost to the extent that they exceeded the cost of maintaining other tracks of the Brimstone, consisting of both main tracks and yard tracks, substantially similar in all respects affecting their maintenance, including amount of use. Giving consideration to the various tracks maintained by [fol. 613] the Brimstone, the character of construction, condition of maintenance, and all factors affecting cost, including extent of use, it was estimated that normal expenditures for maintenance of the joint yard tracks in 1923, sufficient to include usual and ordinary repairs of annual recurrence, and a substantial part of the extraordinary expenditures should not have exceeded a total of $7,491.30. This amount was based on the average cost per mile of maintaining the tracks of the Brimstone Division or Southern Pacific connection, which was $2,714.24 in 1923. Account 1208, "Maintaining joint tracks, yards, and other facilities", has been adjusted accordingly by the deduction of $6,280.85 (Item No. 2), which amount represents the difference between the charges of $13,772.15 appearing on the Brimstone's books for the maintenance of the 2.76 miles of leased

yard tracks, and the estimated reasonable and necessary cost of maintenance of these tracks in 1923, amounting to $7,491.30.

[fol. 614] Maintenance of Equipment

Account 1224—Locomotive Repairs. Item No. 3, Amount $5,000.00

In April, 1923, the Brimstone Railroad & Canal Company purchased from the Union Sulphur Company three small secondhand locomotives for which it paid the following amounts:

Engine No.	Cost
9	$5,000 00
11	3,500 00
12	3,500 00
Total cost	$12,000 00

Evidently these locomotives were in very poor physical condition when purchased, as it was necessary to make extensive repairs to each in order to bring it up to the standard required, one being immediately placed in the shop for repairs while the other two were required to perform service. Engine 12 was the first to undergo extensive repairs, being turned out of the shop in July, 1923. Then engine 9 was shopped for extensive repairs, which were completed in October, 1923. Engine 11 was in the shop for general repairs in May, 1924.

The rules of the Commission governing the "Classification of Investment in Road and Equipment of Steam Roads," provide in respect to General Account II, "Equipment," as follows:

"When secondhand equipment acquired is in such physical condition that it is necessary to make extensive repairs to it to bring it up to the standard required by the carrier, the cost of such repairs shall be included in the account appropriate for the cost of the equipment. A comprehensive statement of the amount estimated to be necessary to rebuild secondhand equipment in accordance with the above provision shall be furnished to the Commission as soon as the estimate is made."

The Brimstone erroneously included the cost of rehabilitating two of these secondhand locomotives in 1923 in operating expense account 1224, "Locomotive repairs," instead of in the appropriate investment account. As a basis for adjusting the operating expenses to correct this error, [fol. 615] a request was made upon the Brimstone for information showing the cost of repairs made to each locomotive in 1923, subdivided as between (a) running repairs and (b) classified repairs, with a brief statement of the nature and extent of classified repairs to each locomotive. The request for this as well as other information, together with the Brimstone's replies thereto are included herein as an appendix to this exhibit.

The cost of repairs allocated to these three secondhand locomotives in 1923, as contained in the Brimstone's answer to this request, are shown in the following table:

Month 1923	Engine No. 9			Engine No. 11			Engine No. 12		
	Labor	Material	Total	Labor	Material	Total	Labor	Material	Total
Jan.									
Feb.							$3.25		$3.25
Mar.	$9.75		$9.75						
Apr.	27.94	$9.75	37.69	$28.46	$17.82	$46.28	377.71	$2.44	380.15
May	105.24	22.98	128.22	28.89	8.13	37.02	579.81	126.09	705.90
June	54.79	1.12	55.91	35.42	11.77	47.19	516.30	328.32	844.62
July	432.07	39.44	471.51	131.72	26.18	157.90	142.82	353.01	495.83
Aug.	625.91	582.31	1,208.22	122.58	34.49	157.07	40.90	.55	41.45
Sept.	301.83	66.26	368.09	5.59		5.59	25.81	.95	26.76
Oct.	31.16	195.22	226.38				40.34	.49	40.83
Nov.	44.16	1.33	45.49	123.81	11.10	134.91	4.35		4.35
Dec.	29.52		29.52	249.80	12.90	262.70	15.90	1.10	17.00
Total	1,662.37	918.41	2,580.78	726.27	122.39	848.66	1,747.19	812.95	2,560.14

In addition to the labor and material charges actually allocated to the repairs of the three secondhand locomotives purchased from the Union Sulphur Company, shown in the preceding table, and to the two other locomotives owned by the Brimstone, there were charges to locomotive repairs in 1923 aggregating $738.35 on account of miscellaneous items of material not allocated to any of the locomotives. While it is impossible to identify in the statement furnished by the Brimstone the actual charges which should properly have been included in investment, it was estimated that such cost amounted to not less than $5,000.00 for the two secondhand locomotives rehabilitated in 1923. This estimate was based on the heavier charges to locomotives Nos. 9 and 12 in 1923, and was also based upon the assumption that a part of the miscellaneous material not allocated to any of the locomotives, was used in the extensive repairs to these two units. Account 1224, "Locomotive repairs," has therefore been adjusted by the deduction of $5,000.00 to cover the extensive repairs aforesaid, erroneously charged to operating expenses instead of to investment in steam locomotives.

[fol. 616] Account 1225—Locomotive Depreciation and Retirements, Item No. 4, Amount $5,427.33

In November, 1923, the Brimstone accounted for the retirement of locomotives Nos. 4 and 8, as follows:

Account	Dr	Cr
619—Loss on retired road and equipment	$5,904 46	
716—Material and supplies	3,560 20	
776—Accrued depreciation—Equipment	10,091 86	
51—Steam locomotives		$18,261 46
309—Steam locomotives—Depreciation		1,235 06
	$19,496 52	$19,496 52

The amount credited to Account 309 represents depreciation in reserve in excess of service loss on Engine No. 4, while the amount charged to Account 619 covers loss of

service value on Engine No. 8 in excess of depreciation in reserve with respect to this unit.

In accordance with the regulations of the Interstate Commerce Commission the Brimstone should have charged to profit and loss the service loss applicable to the period prior to July 1, 1907, determined by a prorate based on life in service prior and subsequent, respectively, to that date, and to operating expenses Account 310, "Steam locomotives—Retirements," the loss of service value similarly found applicable to the period subsequent to July 1, 1907, less depreciation in reserve with respect to this period. On this basis the retirement accounting should have been as follows:

Locomotive No. 4

This unit was acquired in December, 1905, at a cost of $6,864.69, and was retired in November, 1923, salvage valued at $1,442.65 being recovered. Depreciation in reserve with respect to this unit for the period subsequent to July 1, 1907, amounted to $6,957.01. Including both the month in which acquired and that in which retired in the service life of this unit, its retirement should have been accounted for as follows:

Account	Dr	Cr
619—Loss on retired road and equipment	$477 13	
716—Material and supplies (salvage)	1,442 65	
776—Accrued depreciation—Equipment	6,957 01	
310—Steam locomotives—Retirements		$1,712 19
51—Steam locomotives		6,864 69
	$8,576 79	$8,576 79

[fol. 617] Locomotive No. 8

This unit was acquired in October, 1917, at a cost of $11,286.86, and was retired November, 1923, the value of salvage recovered being $2,057.55. Depreciation in reserve with respect to this unit for the period subsequent to July

1, 1907, was $3,434.85. The accounting for this retirement should have been as follows:

Account	Dr.	Cr.
716—Material and supplies	$2,057 55	
776—Accrued depreciation—Equipment	3,434 85	
310—Steam locomotives—Retirements	5,904 46	
51—Steam locomotives		$11,396 86
	$11,396 86	$11,396 86

Summary

The 1923 operating expenses were understated by $5,427.33, as follows:

Amount chargeable to Account 310 (Account of locomotive No. 8)		$5,904 46
Less difference between:		
Credit includible in Account 310 (Account locomotive No. 4)	$1,712 19, and	
Credit included in Account 309	1,235 06	477 13
		$5,427 33

Account 1225, "Locomotive depreciation and retirements," has been adjusted accordingly by the addition of $5,427.33.

Account 1226—Car Repairs, Item No. 5, Amount $3,450.00

In 1923 the Brimstone adopted the policy of applying steel car wheels in place of cast iron wheels in connection with necessary repairs of freight train cars. The entire cost of making such changes, including labor and material, was charged to car repairs, the cost of the steel wheels being charged direct to this account when purchased, and the labor expense during the month in which the wheels were

applied, no credit being allowed for the salvage value of usable or scrap wheels removed.

During 1923 the Brimstone purchased 200 new steel car wheels at a total cost of $7,979.37, including freight charges, making an average cost of $39.89 each. At that time the cost of cast iron wheels was approximately $27.40 each. [fol. 618] In accordance with the regulations of the Interstate Commerce the cost of the new car wheels should have been carried in Account 716, "Material and supplies," pending their application, at which time the excess cost of the improved parts over the cost at current prices of renewing in kind the parts removed, or approximately $12.49 per wheel, should have been charged to Investment Account 53, "Freight train cars." Operating expenses should have been charged with the labor expense involved, plus the value at current prices of the parts removed, less a suitable allowance for the salvage recovered. The value of the salvage recovered was $12.51 per wheel.

While the total cost of the 200 steel car wheels was charged to expenses in 1923, it appears that 62 were still on hand on December 31, 1923, indicating that 138 were applied during that year. This statement is based on the information, hereinbefore referred to, furnished by the Brimstone upon request and herein included as an appendix to this exhibit, showing the amount and value of materials on hand on December 31, 1923, previously charged to car repairs, but not consumed in such repairs prior to that date.

The foregoing indicates that charges made to operating expenses in connection with the renewals described were excessive by approximately $3,450.00, as shown by the following tabulation:

Item and explanation	Amount
Excess cost of 138 steel car wheels over estimated current cost of 138 cast iron car wheels like those removed during 1923, at $12.49 per wheel	$1,723 62
Estimated salvage value of 138 cast iron wheels removed, at $12.51 per wheel	$1,726 38
Total overcharge to Account 1226, "Car repairs," on account of the application of 138 steel car wheels	$3,450 00

Account 1226, "Car repairs," has been adjusted accordingly by deducting the above amount erroneously included in 1923 operating expenses.

Account 1226—Car Repairs, Item No. 6, Amount $3,105.24

Notwithstanding the regulations of the Interstate Commerce Commission to the contrary, it has been the practice of the Brimstone to charge all of the material and supplies as purchased direct to the primary expense or other accounts that would ordinarily be charged at the time the material was actually used or applied, except maintenance of way material such as cross and switch ties, [fol. 619] rails and other track material. A material and supplies account is kept for the maintenance of way material, and an inventory is taken each month and the books are adjusted on the basis of such material actually found to be on hand.

During 1919 and 1920 the Brimstone rebuilt a large number cars was purchased, but in 1922 and 1923, the direct charges to expenses covering the purchase price of car material amounted to $4,639.69 and $12,490.16, respectively. In the same years, car repairs were charged with freight paid foreign lines on this material, amounting to $884.50 and $1,858.78, respectively.

No record was kept by the Brimstone of the amount and value of the material remaining on hand on December 31, 1923, which had been previously charged to car repairs but not consumed in such repairs prior to that date. It seemed possible, however, to closely approximate the amount and value of this material on hand on December 31, 1923, from the record of material purchased and consumed, and a request was, therefore, made upon the Brimstone to furnish the information. The Brimstone's estimate of the material remaining on hand on December 31, 1923, previously charged to car repairs, but not consumed in such repairs prior to that date, amounting to $3,105.24, including the 62 steel car wheels previously mentioned in Item No. 5, is shown in an appendix to this exhibit.

On the basis of the Brimstone's estimate, Account 1226, "Car repairs," has been adjusted accordingly by the deduction of $3,105.24 for material charged to car repairs, but not actually consumed in making such repairs.

Account 1227—Car Depreciation and Retirements, Item No. 7, Amount $7,517.45

During 1919 and 1920 the Brimstone rebuilt a large number of its gondola cars in the 100 and 400 series, most of this work being done by private contractors. Originally the entire cost of this work was charged to Investment Account 53, "Freight train cars," including freight charges paid and minor repairs required in connection with moving the cars to the shops on their own wheels. In January, 1923, the Brimstone adjusted its accounts with respect to the cost of these repairs and freight charges on cars en route to the shops by crediting the investment account and concurrently charging operating expenses, "Freight train cars—Retirements." These lap-over items included in the 1923 expenses, to cover the freight and repair costs in question, aggregated $7,517.45, of which amount $3,910.27 was applicable to 1919, and $3,607.18 to 1920. [fol. 620] As these charges in the 1923 accounts do not reflect expenses incurred in that year and were included therein merely for the purpose of adjusting previous accounting errors, the sum of $7,517.45 has been deducted from Account 1227, "Car depreciation and retirements," for the purpose of arriving at the reasonable and necessary cost of operation in 1923.

Traffic Expenses and General Expenses

Account 1251—"Traffic Expenses," Item 8, Amount $13,277.86

Accounts 1291 to 1294, Inclusive, "General Expenses," Item No. 9, Amount $3,999.67

The Brimstone maintains general offices in New York, N. Y., and Sulphur Mine, La., and certain of the officers and clerks at both places are joint employees of the Brimstone and the Union Sulphur Company. The following tabulation shows the details of Traffic and General Expenses for 1923:

Account No.				
1251	—Traffic expenses:			
	(a) Superintendence:			
	Traffic manager, New York (Joint employee)	$2,500 08		
	Stenographer to traffic manager, New York (Joint employee)	780 00	$3,280 08	
	Assistant traffic manager, New York (Excl. Brimstone employee)	4,200 00		
	Clerk to Ass't traffic manager, New York (Excl. Brimstone employee)	2,400 00		
	Stenographer to Ass't traffic manager, New York (Excl. Brimstone employee)	1,637 50		
	Clerk to Ass't traffic manager, New York (Excl. Brimstone employee)	1,015 00	9,252 50	
	Rent of New York Office	3,000 00		
	Expenses in connection with rate hearings	201 13		
	Other travelling and incidental expenses	250 52	3,451 65	
	Total Superintendence		$15,984 23	
	(b) Advertising			
	(c) Traffic Associations		25 00	
	(d) Stationery and printing		695 33	
	Total Traffic Expenses		$16,704 56	

Account No.		
1291	**Administration:**	
	(a) Salaries and expenses of general officers:	
	President, Sulphur Mine (Joint employee)	$1,800 00
	Treasurer, New York (Joint employee)	999 84
	Auditor, New York (Joint employee)	999 84
	Salaries of Joint general officers	$3,799 68
	Travelling expenses of joint general officers	98 63
	Total salaries and expenses of general officers—all joint	$3,898 31
	(b) Salaries and expenses of clerks and attendants:	
	Bookkeeper, Sulphur Mine (Joint employee)	$1,380 00
	Stenographer to President, Sulphur Mine (Joint employee)	750 00
	Total salaries of general office clerks—all joint	$2,130 00

General bookkeeper, New York (Excl. Brimstone employee)	3,600 00	
Travelling expenses of clerks	30 65	
Total salaries and expenses of clerks and attendants	$5,760 65	
(c) General office supplies and expenses:		
Miscellaneous supplies	$537 78	
Rent of offices at Sulphur Mine	375 00	
Total general office supplies and expenses	$912 78	
(d) Law expenses	10,208 68	
Total Administration		$20,780 42

[fol. 622] 1292—Insurance—General	$826 21
1293—Valuation expenses	2,408 91
1294—Other general expenses	544 32
Total General Expenses	$24,559 86

Summary of Traffic and General Expenses

Traffic Expenses	$16,704 56
General Expenses	24,559 86
Total Traffic and General Expenses	$41,264 42

The following statements, furnished by Mr. W. M. Barrow, of counsels for the Brimstone, show the salaries paid various employees during the years 1921, 1922, and 1923, and the first four months of 1924, and the hours and days of service performed by each. These statements include both sole employees of the Brimstone and joint employees of the Brimstone and the Union Sulphur Company. In connection with these statements it should be said that in some cases the salaries shown are not included in either Traffic or General Expenses, but are embraced in other general groups of expenses, such as Maintenance of Way and Structures, Maintenance of Equipment and Transportation Expenses.

[fol. 623] Wylie M. Barrow

Attorney and Counsellor at Law

Baton Rouge, Louisiana

June 9, 1924.

I. C. C. Docket 12969—Brimstone Divisions

Mr. R. P. Elmore, Statistician,
Interstate Commerce Commission,
Washington, D. C.

Dear Sir: I herewith enclose statement supporting the hours and days of service of employees of the Brimstone Railroad & Canal Company. Also revised statements of salaries paid for the same period.

Please substitute this for incomplete statements furnished at Sulphur Mine and kindly acknowledge receipt.

Yours very truly,

(Signed) W. M. Barrow.

Encl. 2 Copies.

[fol. 624] Joint Employees of B. R. R. & C. Co. and The Union Sulphur Company

	1921	1922	1923	1924 (First 4 Mos.)
C. A. Snider, Treasurer	999 84	1,000 00	999 84	333 28
J. R. Gordon, Traffic Manager	2,500 08	2,500 08	2,500 08	833 36
H. D. Whiton, General Manager	999 84			
P. K. Kelley, Secretary	666 48			
H. S. Craig, Auditor (5 months in 1921)	416 60			
George Scherff, Auditor (3 months in 1921)	249 96	1,000 00	999 84	384 48
M. E. Printz, Stenographer of Traffic Manager	780 00	780 00	780 00	260 00
W. R. Keever, General Supt	999 84	1,000 00	999 84	333 28
S. W. Maxwell, President	999 84	1,800 00	1,800 00	600 00
Keith McKerrow, Engineer	300 00	1,200 00	1,200 00	400 00
E. T. Brewer, Yard Master	1,200 00	1,200 00	1,200 00	400 00
J. A. McNamara, Bookkeeper	250 08	1,380 00	1,380 00	460 00
F. D. O'Bryan, Timekeeper		600 00	600 00	200 00
W. W. Lewis, Storekeeper		480 00	480 00	160 00
A. Gaunt, Stenographer of President		750 00	750 00	250 00
	10,362 56	13,690 08	13,689 60	4,614 40

[fol. 625] Employees of Brimstone Railroad & Canal Company

	1921	1922	1923	1924 (First 4 Mos.)
A. R. Fallon, Asst. Traffic Mgr.	4,200 00	4,200 00	4,200 00	2,000 00
James Moran, Clerk	1,920 00	1,920 00	2,400 00	750 00
Anna Scherff, Stenographer of Asst. Traffic Mgr.	1,800 00	1,770 00		
William O'Berg, Clerk	600 00	720 00	1,020 00	366 64
E. S. Howd, General Bookkeeper	3,450 00	3,600 00	3,900 00	1,300 00
R. H. Pollok, Station Agent (7 months in 1921)	1,750 00			
W. D. Postell, Station Agt. (5 months in 1921)	875 00	2,100 00	2,100 00	700 00
Gladys M. Grant, Stenographer of Asst. Traffic Mgr.			1,668 75	600 00
L. W. Pruitt, Valuation Accountant (11½ mos. in 1923)			1,897 50	700 00
	14,595 00	14,310 00	16,886 25	6,416 64

Hours and Days of Service of Brimstone and Joint Employees for the Year Ended December 31st, 1921

Year		365 days.
Less:		
Sundays	52	
Saturdays	25	
Vacations	11	
Legal Holidays	11 —	99
		266 days or 1,862 hrs. for year.

		1st half of year	2d half of year
S. W. Maxwell	estimated 1/3 time	46 days	44 days
H. D. Whiton	" 5 days per month	30 "	30 "
C. A. Snider	" " " " "	30 "	30 "
J. R. Gordon	" " " " "	30 "	30 "
Geo. Scherff	" " " " "	"	15 "
H. S. Craig	" " " " "	30 "	"
A. R. Fallon	entire time	134 "	132 "
W. R. Keever	estimated time for year	30 "	25 "
K. McKerrow	" " " "	30 "	25 "
P. K. Kelley	" " " "	30 "	25 "
Total		390 days	356 days

Hours and Days of Service of Brimstone and Joint Employees for the Year Ended December 31st, 1921—Continued

E. S. Howd	entire time	1,032 hours	134 days
Jas. Moran	" "	1,056 "	830 hours
A. Scherff	" "	1,056 "	830 hours
W. O'Berg	" "	1,056 "	134 days
M. E. Printz	estimated 1/3 time	352 hours	253 hours
J. A. McNamara	" 1/10 "	103 hours	63 hours

NOTE.—Classification of hours and days of service of officers and employees was revised by the Interstate Commerce Commission, effective July 1, 1921.

[fol. 627] Brimstone Railroad & Canal Company

Hours and Days of Service of Brimstone and Joint Employees for the Year Ended December 31, 1922

Year		365 days
Less:		
Sundays	53	
Saturdays	26	
Vacations	11	
Legal Holidays	10 —	100
		265 days or 1,855 hrs. for year.

S. W. Maxwell	estimated 1/3 time	88 days
C. A. Snider	estimated 5 days per month	60 days
J. R. Gordon	" " " " "	60 "

Geo. Scherff	" " " " "	60 "
W. R. Keever	" " " " "	60 "
K. McKerrow	" " " " "	60 "
A. B. Fallon	entire time	265 "
Total		653 "
E. S. Howd	entire time	265 days
Jas. Moran	entire time	1,855 hours
J. A. McNamara	estimated 1/3 time	618 "
F. D. O'Bryan	estimated 1/3 time	618 "
Total		3,091 "
M. E. Printz	estimated 1/4 time	464 hours
A. Scherff	entire time	1,855 "
A. Gaunt	estimated 1/2 time	977 "
Total		3,296 "
W. W. Lewis	estimated 1/3 time	618 hours
W. O'Berg	entire time	265 days

Hours and Days of Service of Brimstone and Joint Employees for the Year Ended December 31st, 1923

Year	365 days	
Less:		
Sundays	52	
Saturdays	26	
Vacations	11	
Legal Holidays	10 — 99	
	266 days or 1,862 hrs. for year.	
S. W. Maxwell	estimated 1/3 time	89 days
C. A. Snider	" 5 days per month	60 "
J. R. Gordon	" " " " "	60 "
Geo. Scherff	" " " " "	60 "
K. McKerrow	" " " " "	60 "
W. R. Keever	" " " " "	60 "
A. R. Fallon	entire time	266 "
Total		655 days
E. S. Howd	entire time	266 days
Jas. Moran	entire time	1,862 hours
I. A. McNamara	estimated 1/3 time	621 "

	F. D. O'Bryan	estimated ⅓ time	621 "
	L. W. Pruitt	entire time	1,862 "
	Total		4,966 hours
	M. E. Printz	estimated ¼ time	465 hours
	G. M. Grant	entire time	1,862 "
	A. Gaunt	estimated ½ time	931 "
	Total		3,258 hours
	W. W. Lewis	estimated 1/3 time	621 hours
	W. O'Berg	entire time	266 days

[fol. 629] The following tabulation shows the State in which located, mileage of road operated, equipment owned, extent of freight traffic and principal commodity carried, and the operating revenues and operating expenses, of various Class II railroads and of the Brimstone Railroad & Canal Company, and the relationship of traffic expenses and general expenses to all other operating expenses in calendar year 1923.

(Here follows side folio page 630)

[fol. 631] The preceding statements indicate that the traffic and general expenses of the Brimstone in 1923 were excessive, especially in view of the fact that two of the general officers, the vice-president and the secretary, served without compensation. For a small industrial line operating no passenger service and deriving nearly 99 per cent of its traffic from the proprietary company (Union Sulphur Company), it would seem that the traffic expenses should have been small, but on the contrary they were particularly heavy in comparsion with other short lines operating under substantially similar conditions. The legal expenses which constitute a part of general expenses, were also heavy for a small road.

The maintenance of general offices both in New York and Sulphur Mine necessitates the keeping of two sets of records in respect of most of the accounts, and results in other duplication of work. Several of the general officers and other employees at both places who are in the joint employ of both companies, devote a very small proportion of their time to the Brimstone service, but are paid at a liberal rate of compensation. These conditions resulted in excessive charges to traffic and general expenses in 1923, which were not considered to be representative of efficient and economical operation. It was, therefore, necessary to resort to an estimate of the reasonable and necessary traffic and general expenses in 1923 requisite for the economical and efficient operation of the Brimstone in that year.

On the basis of the preceding figures it was estimated that the reasonable and necessary traffic expenses and

[fol. 630]

This statement shows State in which road is located, mileage of road

Name of carrier	State	Miles operated — road
Montana, Wyoming & Southern R. R. Co.	Montana	27.06
Campbell's Creek R. R. Co.	West Va.	13.82
Kentucky & Tennessee Ry.[1]	Kentucky	19.68
Sewell Valley R. R. Co.	West Va.	47.10
St. Louis & O'Fallon Ry. Co.[2]	Illinois	8.1
Lake Champlain & Moriah R. R. Co.	New York	6.62
Ligonier Valley R. R. Co.	Pennsylvania	16.00
Genesee & Wyoming R. R. Co.[3]	New York	17.52
Clarendon & Pittsford R. R. Co.	Vermont	20.28
Chestnut Ridge Ry. Co.	Pennsylvania	12.87
Cornwall R. R. Co.	Pennsylvania	12.67
Totals		
Gulf & Sabine River R. R. Co.	Louisiana	15.14
Deering Southwestern Ry.	Missouri	32.90
Kanawha, Glen Jean & Eastern R. R. Co.	West Va.	29.57
Cumberland & Manchester R. R. Co.	Tennessee	25.59
Oneida & Western R. R. Co.	Tennessee	25.00
Totals		
Brimstone R. R. & Canal Co.	Louisiana	10.25

Plain averages for 11 Class II carriers listed above in (1) having
Weighted averages for 11 Class II carriers listed above in (1) hav
Plain averages for 5 Class II carriers listed above in (2) having t
Weighted averages for 5 Class II carriers listed above in (2) havi
Brimstone Railroad & Canal Company having two general officer

[1] Traffic and general expenses increased 30.7% in 1923 over 1922.
[2] Traffic and general expenses increased 107.6% in 1923 over 1922.
[3] This is a very prosperous road, paying high salaries for a small lin

Traffic and General Expenses of Various Class II Railroads and of the Brimstone Railroad & Canal Company

l operated, amount of equipment owned, amount of freight traffic and principal commodity carried, operating revenues and operating expenses, and per cent that traffic and general expenses. Calendar year 1923

Equipment				Freight traffic					Classification of operating expenses				
Loco-motives	Freight cars	Passenger cars	Total cars all classes	Tons carried	Ton-miles (thous.)	Principal commodity	Operating revenues	Operating expenses	Maint. of way and structures	Maint. of equipment	Trans-portation	Total of three preceding columns	Traffic
(1) Roads having no officers serving without compensation:													
4	144	2	148	447,250	9,341	Bituminous coal	$299,574	$226,151	$72,787	$44,605	$74,804	$192,196	$569
4	141	3	145	723,441	8,006	" "	227,526	202,470	60,360	72,711	50,862	183,933	1,712
6	19	6	35	812,596	8,093	" "	400,101	340,384	115,486	62,927	105,412	283,825	10,041
9	37	6	47	1,130,335	13,943	" "	566,253	410,353	112,584	118,366	154,102	385,052	3,499
3	589	7	605	1,074,574	8,947	" "	540,524	354,759	37,950	170,159	76,788	284,897	5,147
5	274	2	280	395,762	2,617	Iron ore	259,456	210,261	50,948	33,613	113,672	198,233	
6	7	7	14	957,393	12,273	Bituminous coal	323,373	217,115	69,033	33,027	90,269	192,329	2,658
7	3	1	6	852,251	8,164	Salt	605,327	299,887	72,726	49,099	119,835	241,660	2,342
5	202	6	208	182,516	598	Stone (marble)	184,146	155,687	40,235	45,842	65,399	151,476	481
5	3	11	14	1,073,712	1,634	Zinc ore	183,381	163,596	44,898	17,424	81,997	144,319	8,656
12	161	6	167	2,449,861	10,848	Iron ore	665,161	398,277	90,356	60,774	198,227	349,357	1,625
							4,254,822	2,948,940	767,363	708,547	1,131,367	2,607,277	36,730
(2) Roads having two general officers serving without compensation:													
5	96	2	116	863,162	7,164	Logs and lumber	189,683	186,698	80,199	50,071	41,450	171,720	2,531
2	97	2	100	161,781	1,818	" " "	144,753	116,895	47,679	18,039	39,973	105,691	4,988
5	111	4	120	898,828	5,670	Bituminous coal	206,614	169,471	49,595	58,197	43,388	151,180	1,000
9	54	6	66	304,448	7,112	" "	278,559	276,836	108,147	88,686	53,359	250,192	2,635
4	23	3	29	109,127	2,034	Logs and lumber	210,127	143,301	65,140	14,693	43,166	122,999	1,013
							1,029,716	893,201	350,760	229,686	221,336	801,782	12,167
(3) Brimstone Railroad & Canal Company (Note. Brimstone Railroad & Canal Company has two general officers serving without compensation):													
5	156	None	156	1,008,424	1,008	Sulphur	294,445	212,599	36,244	89,984	45,107	171,335	16,704

Summary

no officers serving without compensation
ing no officers serving without compensation
wo general officers serving without compensation
ing two general officers serving without compensation
rs serving without compensation

May have been due to an extension of road made in 1923.
Cause unknown.
e. Six executive and general officers received $45,900 aggregate compensation.

...ers Class II Railroads and of the Brimst... Railroad & Canal Company

...ht traffic and principal commodity carried, operating revenues and operating expenses, and per cent that traffic and general expenses are of all other operating expenses. Calendar year 1923

Freight traffic				Classification of operating expenses						Per cent traffic expenses and general expenses are of all other operating expenses		
Ton-miles (thous.)	Principal commodity	Operating revenues	Operating expenses	Maint. of way and structures	Maint. of equipment	Transportation	Total of three preceding columns	Traffic	General	Traffic expenses	General expenses	Traffic and generals expenses
...having no officers serving without compensation:												
9,341	Bituminous coal	$299,574	$226,151	$72,787	$44,605	$74,804	$192,196	$569	$33,386	0.30%	17.36%	17.66%
8,006	" "	227,526	202,470	69,360	72,711	50,862	183,933	1,712	16,825	0.93%	9.15%	10.08%
8,083	" "	400,101	340,384	115,486	62,927	105,412	283,825	10,041	46,518	3.54%	16.39%	19.93%
13,943	" "	566,253	410,353	112,584	118,366	154,102	385,052	3,499	21,802	0.91%	5.66%	6.57%
8,947	" "	540,524	354,759	37,950	170,159	76,788	284,897	5,147	64,715	1.89%	22.63%	24.52%
2,617	Iron ore	259,456	210,201	50,948	33,613	113,672	198,233		12,028		6.07%	6.07%
12,273	Bituminous coal	325,373	217,115	69,033	33,027	90,269	192,329	2,658	22,128	1.38%	11.50%	12.88%
8,164	Salt	605,327	299,887	72,726	49,099	119,835	241,660	2,342	50,885	3.04%	21.05%	21.09%
598	Stone (marble)	184,146	155,687	40,255	45,842	65,399	151,476	481	3,730	0.32%	2.46%	2.78%
1,634	Zinc ore	183,381	163,596	44,808	17,424	81,997	144,319	8,656	10,621	6.00%	7.36%	13.36%
10,848	Iron ore	665,161	308,277	90,356	60,774	198,227	349,357	1,625	17,295	0.46%	4.96%	5.42%
...		4,254,822	2,948,940	767,393	708,547	1,131,367	2,607,277	36,730	299,933			
...two general officers serving without compensation:												
7,164	Logs and lumber	189,663	186,608	80,199	50,071	41,450	171,720	2,531	12,447	1.47%	7.25%	8.72%
1,818	" " "	144,753	116,895	47,679	18,039	39,973	105,691	4,988	6,216	4.72%	5.88%	10.60%
5,670	Bituminous coal	206,614	169,471	49,595	58,197	43,388	151,180	1,000	17,291	0.66%	11.44%	12.10%
7,112	" "	278,559	276,836	108,147	88,686	53,359	250,192	2,635	24,009	1.05%	9.60%	10.65%
2,034	Logs and lumber	210,127	143,301	65,140	14,693	43,166	122,999	1,013	19,289	0.82%	15.68%	16.50%
...		1,029,716	893,201	350,760	229,686	221,336	801,782	12,167	79,252			
...stone Railroad & Canal Company has two general officers serving without compensation):												
1,068	Sulphur	294,445	212,599	36,244	89,984	45,107	171,335	16,704	24,560	9.75%	14.33%	24.08%
...	Summary									1.706%	11.326%	13.02%
...										1.41%	11.50%	12.91%
...										1.74%	9.97%	11.71%
...										1.52%	9.88%	11.40%
...										9.75%	14.33%	24.08%

...regate compensation.

general expenses of the Brimstone in 1923 should not have exceeded 2 per cent and 12 per cent, respectively, of all other operating expenses. The application of these percentages to the total of all other operating expenses, before making any of the adjustments hereinbefore set out, resulted in estimated traffic expenses of $3,426.70 and estimated general expenses of $20,560.19. Account 1251, "Traffic Expenses," has been adjusted accordingly by the deduction of $13,277.86 (Item No. 8), and accounts 1291 to 1294, inclusive, "General Expenses," have been adjusted by the deduction of $3,999.67 (Item No. 9).

Taxes:

Taxes reported by Brimstone Railroad & Canal Company for calendar year 1923 consisted of the following:

Taxes assessed in the State of Louisiana		$13,641.55
U. S. Government Taxes:		
Capital stock tax	$411.00	
Income tax	10,876.34	
		11,287.34
Total		24,928.89

[fol. 632] Adjustments:

The taxes as above reported include nonoperating as well as operating taxes. Excluding U. S. income tax, and other nonoperating taxes, the operating taxes during 1923 were as follows:

Taxes on Road and Equipment:		
Road	$4,843.88	
Equipment	8,566.73	
		$13,410.61
Capital stock tax		411.00
Total operating taxes		$13,821.61

Taxes have been adjusted accordingly to include operating taxes only.

Joint Facility Rents:

Joint facility rents	$3,289.34

Equipment Rents:

Hire of freight cars:		
Freight cars interchanged, amount receivable	$27,409 67	
Freight cars interchanged, amount payable	5,374 33	
Freight cars interchanged, credit balance		$22,035 34
Rent paid for locomotives		594 13
Equipment rents—Credit balance		22,441 21

[fol. 633] Statement showing investment of Brimstone Railroad & Canal Company in road and equipment, together with materials and supplies and cash on hand, and accrued depreciation in reserve, as of December 31, 1923

Investment in road and equipment:

Road		$126,112 18
Equipment:		
Locomotives	$49,182 45	
Adjustment on account of rehabilitation of two second-hand locomotives purchased (See Item No. 3 of adjustments to 1923 operating expenses)	5,000 00	
Total locomotive investment	54,182 45	
Freight train cars	352,532 12	
Adjustment on account of excess cost of 138 steel car wheels applied		

over estimated current cost of 138 cast iron wheels (See Item No. 5 of adjustments to 1923 operating expenses)	1,723 62		
Total freight train car investment	354,255 74		
Total investment in equipment		408,438 19	
Total investment in road and equipment			$534,550 37
Material and supplies		$8,908 81	
Adjustment on account of car material on hand erroneously charged to car repairs instead of to material and supplies (See Item No. 6 of adjustments to 1923 operating expenses)		3,105 24	
Total material and supplies			$12,014 05
Cash			5,076 30
Total investment, material and supplies, and cash			551,640 72
Accrued depreciation:			
Road		$13,928 13	
Equipment		154,133 84	
			$168,061 97
Investment in road and equipment, including material and supplies and cash, less accrued depreciation on road and equipment			$383,578 75

[fol. 634] Interest on investment:

Interest at 5¾ per cent on investment in road and equipment, including material and supplies and cash	$31,719 34
Interest at 5¾ per cent on investment in road and equipment, including material and supplies and cash, but deducting accrued depreciation on road and equipment	$22,055 78

Summary of adjusted expenses of Brimstone Railroad & Canal Company, together with interest on investment, representing the reasonable and necessary cost of operation in 1923, including both common carrier service and intraplant switching

Operating expenses	$171,329 01
Taxes	13,821 61
Joint facility rents	3,289 34
Equipment rents—Cr. balance	21,441 21
Total operating expenses, taxes, joint facility and equipment rents	166,998 75
Interest on investment, including material and supplies and cash	31,719 34
Total cost of operation, including intraplant switching	198,718 09

If accrued depreciation on road and equipment is deducted before computing interest on investment, the above figures would be revised as follows:

Total operating expenses, taxes and rents	$166,998 75
Interest on investment, including material and supplies and cash	22,055 78
Total cost of operation including intraplant switching	189,054 53

The reasonable and necessary cost of operation in 1923, as above determined, includes intraplant switching for the Union Sulphur Company which must now be deducted in order to ascertain the cost of common carrier service. The

methods used in making this deduction and the results obtained are set out in detail in Part II of this exhibit.

[fol. 635] Docket No. 12969—Divisions Received by Brimstone Railroad & Canal Company

Part II

[fol. 636] Exclusion of intraplant switching from necessary cost of operation in 1923 for the purpose of determining cost of common carrier service

On January 1, 1923, the Brimstone Railroad & Canal Company took over the performance of intraplant switching for the Union Sulphur Company in connection with the loading of sulphur, which prior to that time that company had performed for itself with its own locomotives. It is necessary, therefore, to deduct from the total cost of operation in 1923, as hereinbefore determined in Part I of this exhibit, the proportion chargeable to intraplant switching, in order to arrive at the reasonable and necessary cost of common carrier service. The detail records of the work performed by the Brimstone Railroad & Canal Company's locomotives during the test, May 21 to May 27, 1924, inclusive, in conjunction with other data, afford the bases for making this deduction. The formula for the segregation of intraplant switching costs, the factors used in making this segregation and the results obtained will be found in the following pages.

[fol. 637] Formula for segregating the cost of intraplant switching from the total cost of operation in 1923, as heretofore determined in Part I of this exhibit

The Brimstone Railroad & Canal Company's locomotive equipment in service at the close of 1923, classified according to class of service performed, is shown in the following table:

Locomotive No.	Type	Tractive power (pounds)	Weight (pounds)
	Road Locomotives:		
6	0-6-0 with tender	26,000	126,000
10	0-6-0 " "	35,100	149,000
	Yard Locomotives:		
9	0-4-0 with saddle tank	15,910	68,000
11	0-4-2 " " "	14,200	68,000
12	0-4-2 " " "	14,730	68,000

The class of service performed by the road locomotives consists of road haul, train switching, and weighing cars. The class of service performed by the yard locomotives consists of yard switching, including intraplant switching for the Union Sulphur Company in connection with the loading of sulphur.

During the seven day test, May 21 to May 27, 1924, inclusive, road locomotive No. 10 and yard locomotive No. 9 were in service. The intraplant switching for the Union Sulphur Company in connection with the loading of sulphur, is confined entirely to Zone 1, which is the yard zone embracing the tracks, facilities and plant of that company, and is performed by the yard locomotive which operates within that zone. The detail record kept of the switching operations of the yard locomotive during the test period, in conjunction with a similar record of the work performed by the road locomotive, therefore affords a reasonable and practical basis for arriving at the proportion of the 1923 cost of operation which was chargeable to intraplant switching.

The expenses, taxes, joint facility and equipment rents referred to in the following formula, are those for the year 1923 as previously adjusted in Part I of this exhibit.

[fol. 638] Formula

Maintenance of way and structures expenses:

The only maintenance of way and structures accounts which are involved in the cost of intraplant switching are account 1208, "Maintaining joint tracks, yards and other facilities—Dr.," and a proportion of account 1201, "Superintendence," based on the ratio of the total of account 1208

to the total of all maintenance of way and structures accounts, except account 1201.

These expenses should be apportioned to intraplant switching in the proportion that the tractive power-hours of yard locomotive No. 9 while engaged in intraplant switching in the yard zone (No. 1) during the test period, bear to the total tractive power-hours of both road locomotive No. 10 and yard locomotive No. 9 while engaged in all classes of switching within the limits of the yard zone (Zone No. 1) during that period.

Maintenance of equipment expenses:

The maintenance of equipment expenses involved in the cost of intraplant switching are: Account 1224, "Locomotive repairs;" account 1225, "Locomotive depreciation and retirements;" and a proportion of the following accounts: Account 1221, "Superintendence;" account 1222, "Repairs of machinery and other apparatus;" and account 1223, "Depreciation of machinery and other apparatus;" which proportion should be based on the ratio of the total of accounts 1224 and 1225, to the total of all maintenance of equipment accounts, except accounts 1221, 1222, and 1223.

Account 1224: Locomotive repairs should first be divided between yard locomotives and road locomotives, based upon actual repairs made to each class of locomotives in 1923, including a prorata share of the miscellaneous charges to locomotive repairs not allocated to any of the locomotives. Then the amount of repairs to yard locomotives so ascertained, after deducting extraordinary repairs chargeable to investments, should be apportioned to intraplant switching in the proportion that the tractive power-hours of yard locomotive No. 9 while engaged in intraplant switching in Zone No. 1, bear to the total tractive power hours of this locomotive while engaged in all classes of service in all zones during the test period.

Account 1225: Charges to depreciation and retirements of yard locomotives, less any credits, should be apportioned to intraplant switching in the proportion that the tractive power-hours of yard locomotive No. 9 while engaged in intraplant switching in Zone No. 1, bear to the total tractive power hours of this locomotive while engaged in all classes of service in all zones during the test period.

[fol. 639] The proportion of accounts 1221, 1222, and 1223, based on the ratio of the total of accounts 1224 and 1225 to the total of all maintenance of equipment accounts, except accounts 1221, 1222 and 1223, should be apportioned to intraplant switching in accordance with the intraplant switching proportion found by combining accounts 1224 and 1225.

Traffic expenses:

No portion of traffic expenses is considered to be chargeable to intraplant switching.

Transportation—Rail line expenses:

The transportation expenses involved in the cost of intraplant switching are: Account 1270, "Train enginemen and motormen"; account 1271, "Fuel for train locomotives"; account 1273, "Other train locomotive supplies and expenses"; account 1274, "Trainmen"; and a proportion of the following accounts: Account 1261, "Superintendence and dispatching"; account 1264, "Other yard employees"; and account 1279, "Other rail transportation expenses"; which proportion should be based on the ratio of the total of accounts 1270, 1271, 1273, and 1274, to the total of all transportation—rail line accounts except accounts 1261, 1264, and 1279.

These expenses should be apportioned to intraplant switching on the following bases:

Account 1270: Apportion wages of train enginemen and motormen first between classes of service as distinguished by the work performed by road locomotive No. 10 in road haul and general service, and by yard locomotive No. 9 in yard switching, based on the wages actually paid to the enginemen of the respective locomotives during the test period. Then divide the amount so apportioned to the class of service (yard switching) performed by yard locomotive No. 9, between carrier service and intraplant switching on the basis of the time spent in switching for each service during the test period.

Account 1271: Apportion the fuel expenses first between classes of service, as distinguished by the work performed by road locomotive No. 10 in road haul and general service, and by yard locomotive No. 9 in yard switching, based upon

the proportions of fuel consumed by each of these locomotives during the test period. Then divide the amount so apportioned to the class of service (yard switching) performed by yard locomotive No. 9, between carrier service and intraplant switching according to the tractive power-hours in each service during the test period.

[fol. 640] Account 1273: Other train locomotive supplies and expenses were subdivided in 1923 as follows:

(a) Water for train locomotives		$1,000 00
(b) Other supplies for train locomotives:		
Labor drying sand	$408 00	
All other miscellaneous supplies	193 06	
		601 06
(c) Enginehouse expenses—Train:		
Rental of enginehouse	1,200 00	
Wages paid hostlers	1,770 59	
Other enginehouse expenses	362 52	
		3,333 11
Total other train locomotive supplies and expenses		4,934 17

Apportion subdivisions (a) and (b) of account 1273 to intraplant switching in accordance with the intraplant switching proportion found for account 1271, "Fuel for train locomotives."

Apportion subdivision (c) of account 1273 first equally between classes of service performed by road locomotive No. 10 and yard locomotive No. 9. Then divide the amount so apportioned to the class of service performed by yard locomotive No. 9, between carrier service and intraplant switching in accordance with the time of this locomotive spent in each service during the test period.

Account 1274: Apportion the wages of trainmen first between classes of service performed by road locomotive No. 10 and yard locomotive No. 9, on the basis of the actual wages paid to such employees used in connection with the operation of each of these locomotives, respectively, during the test period. Then divide the amount so apportioned to the class of service performed by yard locomotive No. 9, between carrier service and intraplant switching on the

basis of the time of this locomotive spent in each service during the test period.

Accounts 1261, 1264, and 1279: First ascertain the proportions of these accounts which are chargeable to locomotive operation, on the basis heretofore provided, that is, the ratio of the total of accounts 1270, 1271, 1273 and 1274, to the total of all transportation—rail line accounts, except accounts 1261, 1264 and 1279. Then apportion these amounts to intraplant switching in accordance with the proportion found for intraplant switching by combining accounts 1270, 1271, 1273 and 1274.

[fol. 641] General expenses:

Apportion general expenses to intraplant switching on the basis of the intraplant switching proportion found by combining all maintenance of way and structures, maintenance of equipment, traffic, and transportation—rail line accounts.

Taxes:

The only taxes involved in intraplant switching are those attaching to the class of locomotives used in such service. In 1923 the taxes paid by the Brimstone Railroad & Canal Company on equipment amounted to $8,566.73, which was equivalent to 2.1325 cents per dollar of investment in equipment.

The locomotive equipment of the carrier used in yard switching consists of three small locomotives purchased secondhand from the Union Sulphur Company in 1923 at a total cost of $12,000.00. Two of these locomotives were rehabilitated in 1923 at an approximate cost of $5,000.00, which amount in the adjustment of the 1923 expenses was deducted from expenses as being properly chargeable to investment under the accounting regulations. The total investment in yard switching locomotives, used in intraplant switching, was therefore approximately $17,000.00 at the end of 1923. Estimated taxes thereon at 2.1325 cents per dollar of investment amount to $362.52.

Taxes, as estimated above, should be apportioned to intraplant switching in the proportion that the time of yard locomotive No. 9 spent in intraplant switching during the

test period, bears to the total time of this locomotive spent in all services during the test period.

Joint facility rents:

The Brimstone Railroad & Canal Company paid a rental of $3,185.98 in 1923 for the use of 2.76 miles of yard tracks of the Union Sulphur Company, which were jointly used by both companies. The carrier's use of these joint yard tracks was both in carrier service and in intraplant switching for the Union Sulphur Company.

The proportion of this rental chargeable to intraplant switching should be based upon the ratio of the tractive power-hours of yard engine No. 9 while engaged in intraplant switching in the yard zone (No. 1), to the total tractive power-hours of *of* both road locomotive No. 10 and yard locomotive No. 9 while engaged in all classes of service in this zone during the test period.

[fol. 642] Interest on investment:

The approximate investment in yard switching locomotives, used in intraplant switching service, was approximately $17,000.00, as the close of 1923, as previously shown in connection with taxes.

Interest on investment in yard switching locomotives at 5.75 per cent, per annum, amounting to $977.50, should be apportioned to intraplant switching in the proportion that the time of yard locomotive No. 9 during the test period spent in intraplant switching bears to the total time of this locomotive spent in all services during the test period.

Segregation of cost of intraplant switching from total cost of operation in 1923, as heretofore determined in Part I of this exhibit, showing application of formula therefor, factors used, and results obtained.

Factors Derived from Test Period Data

(1) Locomotive numbers and tractive power:

Yard locomotive: No. 9—Tractive power: 15,910 Pounds.
Road locomotive: No. 10—Tractive power: 35,100 Pounds.

(2) Character of service performed by locomotives:

By yard locomotive No. 9: Yard switching, including intraplant switching.
By road locomotive No. 10: Road haul, train switching, weighing cars.

(3) Time of locomotive in each zone during test period:

Locomotive No.	Time of locomotives in each zone during test period shown in minutes					
	Zone 1, yard zone	Zone 2, S. P. connection	Zone 3, weighing zone	Zone 4, K. C. S. running zone	Zone 5, K. C. S. connection	All zones
9	3,478		32	13		3,523
10	991	465	848	183	530	3,017
Total	4,469	465	880	196	530	6,540

[fol. 643] (4) Time of locomotive during test period divided between carrier service and intraplant switching:

	Time of locomotives in each zone during test period shown in minutes								
	Zone 1								
		Carrier service			Carrier service—transportation				
Locomotive No.	Intraplant switching	Transportation	Miscellaneous carrier	Total time Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	All zones, all services
9	3,146	261	71	3,478		32	13		3,523
10		991		991	465	848	183	530	3,017
Total	3,146	1,252	71	4,469	465	880	196	530	6,540

(5) Tractive power-hours of yard locomotive No. 9 while engaged in intraplant switching in Zone 1 (yard zone):

Time in intraplant switching: 3,146 minutes = 52.43 hours.
Tractive power-hours: 52.43 hrs. x 15,910 lbs. = 834,161 T. P. Hours

(6) Tractive power-hours of both yard locomotive No. 9 and road locomotive No. 10 in all services in Zone No. 1 (yard zone):

Yard locomotive No. 9, time in Zone No. 1: 3,478 minutes = 57.97 hrs.
Road locomotive No. 10, time in Zone No. 1: 991 minutes = 16.52 hrs.

Segregation of Intraplant Switching, etc.—Continued

Tractive power-hours locomotive No. 9:
57.97 hrs. x 15,910 lbs. = 922,303 T. P. hours.

Tractive power-hours locomotive No. 10:
16.52 hrs. x 35,100 lbs. = 579,852 T. P. hours.

Tractive power-hours both locomotives, in all services in Zone No. 1 = 1,502,155 T. P. hours.

(7) Tractive power-hours of both yard locomotive No. 9 and road locomotive No. 10 in all services in all zones:

Yard locomotive No. 9, time in all zones: 3,523 minutes = 58.72 hours.
Road locomotive No. 10, time in all zones: 3,017 minutes = 50.28 hours.

Tractive power-hours locomotive No. 9 all zones:
58.72 hrs. x 15,910 lbs. = 934,235 T. P. hours.

Tractive power-hours locomotive No. 10 all zones:
50.28 hrs. x 35,100 lbs. = 1,764,828 T. P. hours.

Total tractive power-hours of both locomotives in all services in all zones . . . . . 2,699,063 T. P. hours.

(8) Ratio of tractive power-hours of yard locomotive No. 9 in intraplant switching in Zone No. 1 to total tractive power-hours of both yard locomotive No. 9 and road locomotive No. 10 in all services in Zone No. 1:

Item (5) divided by item (6) = 55.53 per cent.

[fol. 644] (9) **Ratio of tractive power-hours of yard locomotive No. 9 in intraplant switching in Zone No. 1 to total tractive power-hours of both yard locomotive No. 9 and road locomotive No. 10 in all services in all zones:**

Item (5) divided by item (7) = 30.91 per cent.

Segregation of Cost of Intraplant Switching from Total Cost of Operation in 1923 as Hereto Determined in Part I of This Exhibit

Maintenance of Way and Structures Expenses

Account 1208		$7,491 30
Ratio of account 1208 to total of accounts 1202 to 1208 inclusive	31 75%	
Account 1201, proportion to be apportioned ($2,301.72 x 31.75%)		730 80
Total M. of W. & S. expenses to be apportioned		$8,222 10
Ratio of tractive power-hours of yard locomotive No. 9 in intraplant switching in Zone No. 1 to total tractive power-hours of both yard locomotive No. 9 and road locomotive No. 10 in all services in Zone No. 1 during test period	55 53%	
Proportion of M. of W. & S. expenses chargeable to intraplant switching $8,222.10 x 55.53%		$4,565 73

Segregation of Cost of Intraplant Switching—Continued

Maintenance of Equipment Expenses

Account 1224, Locomotive repairs			$3,974 26
Locomotive repairs allocated to class of locomotives:			
Road Locomotives		Yard Locomotives	
No. 6	$1,200 11	No. 9	$2,580 78
No. 10	1,046 22	No. 11	848 66
		No. 12	2,560 14
	$2,246 33		$5,989 58
Miscellaneous charges to locomotive repairs not allocated to any locomotives			$738 35
Miscellaneous charges apportioned to classes of locomotives on the basis of assigned charges:			
Road locomotives: $738.35 x 27.28%			$201 42
Yard locomotives: 738.35 x 72.72%			536 93
	100.00%		$738 35

[fol. 645] Allocated and apportioned charges to yard locomotives:

Allocated charges	$5,989 58	
Apportioned charges	536 93	
Total	$6,526 51	
Deduct extraordinary repairs chargeable to investment	5,000 00	
Amount to be apportioned to carrier service and intraplant switching	$1,526 51	
Above amount apportioned to intraplant switching:		
Ratio tractive power-hours yard locomotive No. 9 in intraplant switching in Zone No. 1 to total tractive power-hours of yard locomotive No. 9 in all services in all zones during test period, 89.29%—$1,526.51 x 89.29%	$1,363 02	
Account 1224 Apportioned to intraplant switching		$1,363 02
Account 1225, "Locomotive depreciation and retirements"		6,728 89
Depreciation yard locomotives:		
No. 9	$374 94	
No. 11	262 53	
No. 12	262 53	
	$900 00	

Retirement yard locomotives:		
No. 4	Credit 1,712 19	
Total	Credit $812 19	
Ratio of tractive power-hours of yard locomotive No. 9 in intraplant switching in Zone No. 1, to total tractive power-hours of yard locomotive No. 9 in all services in all zones during test period	89 29%	
Depreciation and retirements of yard locomotives apportioned to intraplant switching:		
$812.19 (Cr.) x 89.29%	$725.20 (Credit)	
Account 1225 apportioned to intraplant switching	Cr.	$725 20
Ratio of total of accounts 1224 and 1225 to total of accounts 1224 to 1235, inclusive	14 42%	
Acct. 1221	$1,813 45	
Acct. 1222	84 35	
Acct. 1223	313 59	
	$2,211 39	
Account 1221 Account 1222 Proportion to be apportioned $2,211.39 x 14.42% Account 1223		$318 88

[fol. 646] Intraplant proportion of Accounts 1224 and 1225 combined:

	Total	Intraplant switching proportion	Per cent intraplant switching
Account 1224	$3,974 26	$1,363 02	
Account 1225	6,728 89	Cr. 725 20	
	10,703 15	637 82	5 96%

Accounts 1221, 1222, and 1223, apportined to intraplant.

Switching—$318.88 x 5 96% $19 00

Traffic Expenses

No portion of traffic expenses is considered to be chargeable to intraplant switching.

Transportation—Rail Line Expenses

Account 1270 ..... $6,255 64

Enginemen's wages during test period:

Yard locomotive No. 9:

Engineer, 56 hours @ $0 63	$35 28			
5 " @ 945	4 73			
		$40 01	37 29%	

Segregation of Intraplant Switching, etc.—Continued

Road locomotive No. 10:						
Engineer,	48 hours	@ $0 75	$36 00			
	3 "	@ 1 125	3 38			
				$39 38		
Firemen,	44 "	@ 54	23 76			
	4 "	@ 63	2 52			
	2 "	@ 81	1 62			
				$27 90	$67 28	62 71%
Total enginemen's wages during test period					$107 29	100 00%

Account 1270 apportioned to classes of service:

Yard switching service—Apportionment based on proportion of total enginemen's wages during test period paid to enginemen of yard locomotive No. 9, $6,255.64 x 37.29%	$2,332 73
Road haul and general service—Apportionment based on proportion of total enginemen's wages during test period paid to enginemen of road locomotive No. 10, $6,255.64 x 6271%	3,922 91
Total of Account 1270	$6,255 64

[fol. 647] Apportionment of Yard Switching Service to Carrier Service and Intraplant Switching

Proportion of Account 1270 apportioned to yard switching	$2,332 73

Time of yard locomotive No. 9 during test period:

Time spent in intraplant switching	3146	minutes	89 30%	
Time spent in carrier service	377	"	10 70%	
Total time of yard locomotive No. 9.	3523	"	100 00%	
Account 1270 apportioned to intraplant switching—$2,332.73 x 89.30%				$2,083 13
Account 1271 (Fuel)				$16,603 00
Fuel oil consumed during test period:				
By yard locomotive No. 9 in yard switching	41 357	barrels	30 74%	
By road locomotive No. 10 in road haul and general services	93 190	"	69 26%	
	134 547	"	100 00%	
Account 1271 apportioned to yard switching service—$16,603.00 x 30.74%				$5,103 76
Ratio of tractive power-hours of yard locomotive No. 9 in intraplant switching to total tractive power-hours of yard locomotive No. 9 in all services during test period			89 29%	
Account 1271 apportioned to intraplant switching—$5,103.76 x 89.29%				$4,557 15
Account 1273, "Other train locomotive supplies and expenses"				$4,934 17
(a) Water for train locomotives			$1,000 00	
(b) Other supplies for train locomotives			601 06	
(c) Enginehouse expenses—Train.			3,333 11	
Total Account 1273			$4,934 17	

(a) Water apportioned to intraplant switching on the basis of intraplant switching proportion of Account 1271, $1,000.00 x 27.45% $274 50

(b) Other supplies apportioned to intraplant switching on the basis of intraplant switching proportion of Account 1271, $601.06 x 27.45% $164 99

(c) Enginehouse expenses—Train apportioned first equally between yard switching service and road haul and general service:

Yard switching service $1,666 56

Road haul and general service $1,666 55

[fol. 648] Yard switching proportion above apportioned to intraplant switching on the basis of the proportion of the total time of yard locomotive No. 9 during the test period spent in intraplant switching—$1,666.56 x 89.29% $1,488 07

Account 1273—total amount apportioned to intraplant switching $1,927 56

Account 1274—"Trainmen" $8,119 53

(a) Apportioned first to classes of service, on the basis of the actual wages paid to trainmen employed in connection with the operation of yard locomotive No. 9 and road locomotive No. 10, respectively, during the test period.

Trainmen's wages during test period:

Yard locomotive No. 9:

Switchman,	56 hours @ $0 54	$30 24		
	5 " @ 0 18	4 05		
			$34 29	23 25%

Road locomotive No. 10:

Conductor,	48	hours	@	$0 75..	$36 00		
	2	"	@	1 125 ..	2 25		
Switchman,	48	"	@	0 75	36 00		
	2	"	@	1 125..	2 25		
Switchman,	48	"	@	0 72	34 56		
	2	"	@	1 08..	2 16		
						$113 22	76 75%
						$147 51	100 00%

Yard switching proportion, $8,119.53 x 23.25%.	$1,887 79
Road haul and general service proportion, $8,119.53 x 76.75%	6,231 74
Total Account 1274.. ..	$8,119 53
(b) Yard switching proportion of Account 1274 apportioned to intraplant switching on the basis of the proportion of the total time of yard locomotive No. 9 during the test period spent in intraplant switching—$1,887.79 x 89.30%	$1,685 80
Account 1274—"Trainmen," apportioned to intraplant switching ..	$1,685 80
Account 1264—"Other yard employees" ing"..	$333 53
Account 1264—"Other yard employees"	1,200 00
Account 1279—"Other rail transportation expenses"	927 81
Total of Accounts 1261, 1264, and 1279	$2,461 34

[fol. 649] (a) Proportion of above accounts chargeable to locomotive operation, based on the ratio of the total of accounts 1270, 1271, 1273 and 1274, to the total of all Transportation—Rail Line accounts, except accounts 1261, 1264 and 1279 — 84 21%

$2,461.34 × 84.21% — $2,072 69

(b) Intraplant switching proportion of accounts 1270, 1271, 1273, and 1274:

Account No.	Total of account	Intraplant switching proportion	Per cent intraplant switching
1270	$6,255 64	$2,083 13	
1271	16,603 00	4,557 15	
1273	4,934 17	1,927 56	
1274	8,119 53	1,685 80	
Total	35,912 34	10,253 64	28 47%

Accounts 1261, 1264 and 1279, Proportion Chargeable to Locomotive Operation, Apportioned to Intraplant Switching

Proportion of above accounts chargeable to locomotive operation, based on (a)	$2,072 69
Above proportion chargeable to locomotive operation apportioned to intraplant switching, based on (b): $2,072.69 × 28.47%	$590 09

[fol. 650] Summary of Transportation—Rail Line Accounts Apportioned to Intraplant Switching

Account No.	Total of account	Amount apportioned to intraplant switching
1261, 1264 and 1279	$2,461 34	$590 09
1262	6,471 57	
1270	6,255 64	2,083 13
1271	16,603 00	4,557 15
1273	4,934 17	1,927 56
1274	8,119 53	1,685 80
1275	199 16	
1277	3 05	
1278	59 23	
Total	45,106 69	10,843 73

General Expenses

General expenses (total) $20,560 19

Apportionment of general expenses to intraplant switching is based on the intraplant switching proportion found from all maintenance of way and structures, maintenance of equipment, traffic, and transportation—rail line accounts combined.

	Total	Intraplant switching proportion	Per cent intraplant switching
Maintenance of way and structures accounts	$25,896 71	$4,565 73	
Maintenance of equipment accounts	76,338 72	656 82	
Traffic accounts	3,426 70		
Transportation — rail line accounts	45,106 69	10,843 73	
Total	150,768 82	16,066 28	10 66%

General expenses apportioned to intraplant switching: $20,560.19 × 10.66% $2,191 72

[fol. 651] Summary of Operating Expenses Apportioned to Intraplant Switching

	Total	Amount apportioned to intraplant switching
Maintenance of way and structures	$25,896 71	$4,565 73
Maintenance of equipment	76,338 72	656 82
Traffic	3,426 70	
Transportation—rail line	45,106 69	10,843 73
General	20,560 19	2,191 72
Total operating expenses	171,329 01	18,258 00
Taxes apportioned to intraplant switching:		
Estimated taxes on three small secondhand locomotives used in intraplant switching and carrier service yard switching, based on the cost		

of these locomotives, plus approximate additions and betterments, and a tax rate of 2.1325 cents per dollar of investment in equipment, amounted in 1923 to $362 52

The proportion of the taxes on these locomotives apportioned to intraplant switching is based on the proportion of the total time of yard locomotive No. 9 during the test period spent in intraplant switching: $362.52 x 89.29% $323 69

[fol. 652] Joint facility rents apportioned to intraplant switching:

The amount of rental paid by the Brimstone Railroad & Canal Company in 1923 for the yard tracks leased from the Union Sulphur Company, which are used both in carrier service and intraplant switching, was $3,185 98

This amount should be apportioned to intraplant switching on the basis of the ratio of the tractive power-hours of yard locomotive No. 9, while engaged in intraplant switching in the yard zone (No. 1), to the total tractive power-hours of both yard locomotive No. 9 and road locomotive No. 10 while engaged in all classes of service within that zone during the test period: $3,185.98 x 55.53% $1,769 17

Interest on investment apportioned to intraplant switching:

Approximate investment in small locomotives used in intraplant switching and carrier service yard switching $17,000 00

Interest on investment in these locomotives at 5.75 per cent per annum $977 50

Apportionment to intraplant switching of interest on investment in yard switching locomotives is based on the ratio of the time of yard locomotive No. 9 spent in intraplant to the total time of this locomotive spent in all services during the test period. Interest on investment apportioned to intraplant switching: $977.50 x 89.29% $872 81

Summary of the cost of intraplant switching performed for the Union Sulphur Company during 1923:

Operating expenses	$18,258 00
Taxes	323 69
Joint facility rents	1,769 17
Interest on investment	872 81
Total	21,223 67

[fol. 653] Recapitulation

Showing reasonable and necessary cost of operation in 1923, as hereinbefore determined in Part I of this exhibit, and the separation of this cost between common carrier service and intraplant switching, as made in Part II of this exhibit.

	Total Amount	Proportion of total amount chargeable to: Common carrier service	Proportion of total amount chargeable to: Intraplant switching
Operating Expenses:			
Maintenance of way and structures	$25,896 71	$21,330 98	$4,565 73
Maintenance of equipment	76,338 72	75,681 90	656 82
Traffic	3,426 70	3,426 70	.....
Transportation—rail line	45,196 69	34,262 96	10,843 73
General	20,560 19	18,368 47	2,191 72
Total operating expenses	171,329 01	153,071 01	18,258 00
Taxes	13,821 61	13,497 92	323 69
Joint facility rents	3,289 34	1,520 17	1,769 17
Equipment rents—Credit balance	21,441 21	21,441 21	.....

Total operating expenses, taxes and rents....	166,998 75	146,647 89	20,350 86
Interest on investment	31,719 34	30,846 53	872 81
Total cost of operation including interest on investment	198,718 09	177,494 42	21,223 67
If interest is computed on investment, less accrued depreciation, the total cost of operation would be	189,054 53	167,877 07	21,177 46

[fol. 654] Appendix

This appendix contains the following referred to in Part I of this exhibit:

Agreement between the Brimstone Railroad & Canal Company and the Union Sulphur Company covering the lease to the former of certain yard tracks at Sulphur Mine, La., owned by the latter.

Request made upon Brimstone Railroad & Canal Company for certain information to supplement the Commission's records and the carrier's answer thereto.

[fol. 655] This Agreement entered into on this 1st day of January, 1923, by and between the Union Sulphur Company, a corporation organized and existing under the laws of the State of New Jersey, hereinafter referred to as "The Union Company," party of the first part, and the Brimestone Railroad & Canal Company, a corporation organized and existing under the laws of the State of Louisiana, hereinafter referred to as "The Brimestone Company," party of the second part, witnesseth:

Whereas, The Union Company owns certain standard gauge railway tracks near the sulphur mine of The Union Company in Calcasieu Parish, Louisiana, and

Whereas, in its common carrier operations, The Brimestone Company, desires to use a portion of said tracks and to that end desires to secure permission to operate its engines and trains over a portion of said tracks.

Now, therefore, it is agreed between the parties hereto as follows:

I

In consideration of the covenants and of the payment of rentals hereinafter specified, The Union Company has given and granted, and by these presents does give and grant unto The Brimestone Company the right, during the continuance of the term hereinafter specified, to use, for the operation of its engines and cars upon and over the same in common with The Union Company, that portion of The Union Company's tracks, which on the map attached hereto and made a part hereof, are colored in blue and which extend from the point marked A to T to G and H and on to C and also from the point T to point U.

II

The Brimestone Company shall have the right to use said tracks for the transportation of its engines and trains, as well as the switching thereof, but the granting of said rights shall not preclude the joint use of said tracks by The Union Company.

III

This contract shall remain in force and effect for ten years from and after its date unless cancelled at an earlier date; and either party shall have the right to cancel same by giving six months written notice thereof.

[fol. 656]

IV

In consideration of the aforesaid grant, The Brimestone Company hereby covenants and agrees to and with The Union Company that it will pay to The Union Company an annual rental of $3,185.98, which amount shall be payable each year in advance.

V

As a part of the consideration for the right granted to it, the Brimestone Company assumes all liability for:

Injury to or death of officers or employees of The Brimestone Company or of third persons on the engines or trains of The Brimestone Company while operating on said tracks, or when caused by the engines or trains of The Brimestone Company on said tracks: and loss or damage to property of The Brimstone Company on said tracks; it being understood that The Union Company shall not be subject to any liability for persons or property damages by reason of its being the owner of said tracks.

VI

The Brimestone Company agrees to keep in repair and Maintain the tracks hereby leased at its own expense. It is understood that this agreement shall obligate The Brimestone Company to keep said tracks in good operating conditions, the repair and maintenance thereof to include the replacing of ties or rails and appurtenances whenever necessary.

VII

In addition to the lease of the blue tracks, granted herein, The Brimestone Company, for the same consideration recited above, shall also have the right to use the tracks colored in green on the attached map for the purpose of moving its engines and cars to the water spout, the fuel track, train shed or repair shops, or the warehouse of The Union Company in spotting cars loaded with merchandise, it being understood, however, that The Brimestone Company shall not be required to maintain the tracks so colored in green.

VIII

The Brimestone Company shall not have the right or power to assign or transfer this agreement or any right hereunder except upon the written consent of The Union Company.

[fol. 657] In witness whereof the parties have caused this instrument to be executed in duplicate by their duly authorized officers on the date first above written.

The Union Sulphur Company, by (Signed) Henry Whiton, President. Brimestone Railroad & Canal Company, by (Signed) S. W. Maxwell.

Witnesses: (To signature of Mr. Whiton:) G. M. Grant, A. R. Fallon; (to signature of Mr. Maxwell:) A. Gaunt, N. G. Simpson.

Copy.

[fol. 658] Copy

December 17, 1924. G-S.

Mr. Wylie M. Barrow, Attorney, Baton Rouge, La.

Dear Sir: This will acknowledge receipt of your letter of December 13 furnishing the information called for in my letter of November 28, and for it I thank you.

Yours very truly, (Signed) Frank McManamy, Commissioner.

[fol. 659] Copy

Wylie M. Barrow, Attorney and Counsellor at Law, Baton Rouge, Louisiana

December 13, 1924.

Hon. Frank McNanamy, Interstate Commerce Commissioner, Washington, D. C.

My Dear Sir: Mr. S. W. Maxwell, President of the Brimestone Railroad & Canal Company, has requested me to forward you in reply to your letter of November 28th, 1924, the enclosed answers to the questions propounded in your letter of the 28th, giving the information which you desire.

The answer to question No. 2 is an estimate of the material on hand at the close of business on December 31, 1923. An estimate was resorted to for the reason that the records of the Brimestone Railroad & Canal Company do not reflect the exact amount and value of materials on hand

at the close of business on December 31, 1923, previously charged direct to car repairs but not consumed in such repairs prior to that date. There is, however, shown at the bottom of the estimate the quantity of material on hand as of September, 1924, and as of October, 1924. It will be observed that these quantities check closely with the estimated amount for December 31, 1923.

Yours very truly, (Signed) W. M. Barrow.

Encl.

[fol. 660] Question No. 1

Investment in equipment as of December 31, 1923, subdivided as follows:

(a) Investment in locomotives.

(b) Investment in freight train cars.

(c) Investment in property other than that embraced in (a) and (b) above.

(d) Investment in equipment—total amount.

Answer

Steam Locomotives	$49,182 45
Freight Train Cars	352,532 12
Total Equipment	$401,714 57

Question No. 2

Amount and value of materials on hand at the close of business on December 31, 1923, previously charged direct to car repairs, but not consumed in such repairs prior to that date.

Answer

600 Grab Irons	$150 00
62 Steel Car Wheels	2,544 48
8 5½ x 10 Journal Boxes	80 96
8 G 132 Friction Center Blocks	14 80
16 G 131 Friction Side Blocks	24 00
6 G 138 Friction Boxes	37 80
12 G 70 Spring Barrels	178 20
100 Brake Shoes	65 00
	$3,105 24

On hand Oct. 1924	$3,628 93	For Comparative
On hand Sept. 1924	2,908 61	Purposes Only

Question No. 3.

Cost of repairs made to each locomotive during the year 1923, sub-divided as between (a) running repairs and (b) classified repairs, with brief statement of nature and extent of classified repairs to each locomotive.

Answer

(Attached hereto)

[fol. 661] Question No. 4

Taxes, other than U. S. Government taxes, paid during 1923, sub-divided as between (a) road and (b) equipment.

Answer

Road	$4,843 88
Equipment	8,566 73

[fol 992]

Copy

Question No. 3

	Engine No 6		Engine No 9		Engine No 10		Engine No 11		Engine No 12		
	Labor	Mat'l	Labor	Mat'l	Labor	Mat'l	Labor	Mat'l	Labor	Mat'l	Miscl.
January	537 98	54 23			40 16						143.46
February	23 87	55			52 77						
March	19 55	1 45	9 75		105 86	4 31			3 25		
April	15 48		27 94	9 75	61 23	7 56	28 46	17 82	377 71	2 44	1.71
May	40 64	10 31	105 24	22 98	24 93	10 00	28 89	8 13	579 81	128 69	401.35
June	57 58	1 41	54 79	1 12	56 58	49 04	35 42	11 77	516 20	328 32	135.79
July	6 82	32	472 07	39 44	86 76	32 51	131 72	26 18	142 82	353 01	5.69
August	1 56	7 05	625 91	582 31	48 22		122 58	34 49	40 90	55	
September	20 67	5 45	201 83	66 26	36 61	81 72	5 59		25 81	35	44.53
October	285 49	54 21	31 16	195 22	80 61	73 09			40 34	49	6.42
November	62 32	79	44 16	1 33	50 35	1 18	123 81	11 40	4 35		
December	70 65	1 13	29 52		76 18	4 15	249 80	12 90	15 90	1 10	
Total	1062 61	137 50	1902 37	918 41	782 06	283 56	726 27	122 39	1747 19	812 95	738.35

Grand Total..... $8,974.26

Miscellaneous

$143.46	Air brake material
401.35	51 2 x 10' iron boiler tubes
135.79	$103.81 Oak lumber, $31.98 freight on boiler tubes
5.69	$2.87 plate glass, $2.22 28' of 1¼" B. P.
44.53	$41.49 10 sets injector nozzles, $3.04 plate glass
6.42	41' of B. P.
1.71	Employees Store
$738.35	

	Name of road	Mileage operated: Road	Mileage operated: All tracks	L ma
(La.) (Tex.)	Brimstone Railroad & Canal Co	10.25	15.81	
(La.)	Gulf & Sabine River Railroad Co.[1]	15.14	20.93	
(Tex.)	Dayton-Goose Creek Ry. Co.[2]	25.39	31.22	
(Tex.)	Rio Grande & Eagle Pass Ry. Co.[2]	26.89	39.82	
(Okla.)	Miami Mineral Belt Railroad Co.[4]	12.45	36.18	
(Okla.)	Oklahoma Southwestern Ry. Co.[7]	24.10	36.49	
(Mo.)	Deering Southwestern Ry. Co.[2]	32.90	41.17	
(Ariz.)	Verde Tunnel Smelter Railroad Co.[2]	10.87	16.13	
(Mont.)	Montana, Wyoming & Southern R. R. Co.[8]	27.06	35.35	
(Okla.)	Okmulgee Northern Ry. Co.[4]	21.50	25.65	
(W. Va.)	Kanawha, Glen, Jean & Eastern R. R. Co.[1]	29.57	50.97	
(W. Va.)	Campbell's Creek Railroad Co.[4]	13.82	16.63	
(Ky.)	Kentucky & Tennessee Railway[6]	19.68	26.61	
(Tenn.)	Cumberland & Manchester R. R. Co.[1]	25.59	34.83	
(Tenn.)	Oneida & Western Railroad Co.[1]	25.00	33.37	
(La.)	New Orleans, Natalbany & Natchez Ry. Co.[2]	28.22	35.77	
(W. Va.)	Sewell Valley Railroad Co.[4]	47.10	49.24	
(Pa.)	Northampton & Bath Railroad Co.[5]	8.24	12.39	
(Ill.)	St. Louis & O'Fallon Railway Co.[3]	8.94	20.60	
(W. Va.)	West Virginia Northern Railroad Co.[2]	11.07	12.45	
(N. Y.)	Lake Champlain & Moriah R. R. Co.[3]	6.62	23.10	
(Pa.)	Ligonier Valley Railroad Co.[3]	16.00	29.00	
(N. Y.)	Genesee & Wyoming Railroad Co.[3]	17.52	27.03	
(Vt.)	Clarendon & Pittsford Railroad Co.[3]	20.28	25.43	
(Pa.)	Chestnut Ridge Railway Co.[3]	12.87	15.96	
(Pa.)	Cornwall Railroad Co.[3]	12.67	34.70	

[1] 5 Roads—2 general officers served without compensation same as the Brimsto
[2] 4 Roads—Having one general officer or more than 2 general officers who serv
[3] 3 Roads—Operating expenses exceeded operating revenues.
[4] 2 Roads—General expenses exceeded transportation expenses.
[5] 11 Roads—No general officers served without compensation.
[6] Includes $10,299, miscellaneous operations.

Interstate Commerce Commission

Bureau of Statistics

General & Traffic Expenses for Various Class II Roads (Industrial) for 1923

(Docket No. 12969. Divisions received by Brimstone R. R. & Canal Co.)

ipment			Revenue freight traffic				Classification of operating expenses						
Pas-senger cars	Total cars all classes	Car loads	Tons	Ton-miles (thousands)	Average haul (miles)	Principal commodity	Operating revenues	M. of W. & S.	M. of E.	Trans-portation	Traffic	General	Total operating expenses
	156	24,400	1,068,424	1,767	1.65	Sulphur	$254,445	$30,244	$89,984	$45,107	$16,704	$24,560	$212,599
2	116	29,172	863,102	7,194	8.27	Logs and lumber	189,663	80,199	50,071	41,450	2,531	12,447	186,698
2	5	9,071	282,706	6,779	23.97	Petroleum	380,664	76,782	16,241	66,606	2,923	57,615	220,102
3	137	2,231	66,332	1,360	20.76	Coal and agric. products	81,843	38,691	24,833	24,549	1,884	9,285	99,253
	69	10,052	538,880	2,133	6.29	Ores and concentrate	262,529	59,923	21,456	54,021	8,954	58,054	202,409
4	16	3,733	96,639	950	10.04	Petroleum and Manf. articles	170,842	85,055	24,300	48,328	3,119	25,083	185,885
2	100	5,481	161,781	1,818	11.24	Logs and Lumber	144,753	47,679	18,039	39,973	4,987	6,216	116,895
3	72	24,952	1,547,774	10,635	6.87	Ores and concentrates	384,349	61,745	105,796	117,885		17,943	303,329
2	148	10,685	447,290	9,341	20.84	Bituminous Coal	299,574	72,786	44,605	74,803	569	33,386	226,151
3	4	10,483	323,190	3,200	9.90	Refined Petroleum	223,185	19,570	26,829	55,629	22,392	96,844	221,043
4	120	14,695	808,828	5,670	6.31	Bituminous Coal	206,614	49,595	58,197	43,388	1,000	17,291	169,471
3	145	19,181	723,441	8,006	11.07	" "	227,526	60,360	72,711	50,862	1,712	16,825	202,470
6	35	16,504	812,506	8,093	9.96	" "	400,101	115,486	62,927	105,412	10,041	46,518	340,384
6	46	7,769	304,448	7,112	23.36	" "	278,559	108,147	88,686	53,359	2,635	24,009	276,836
3	59	4,306	109,127	2,034	18.64	Logs and Lumber	210,127	65,140	14,603	43,106	1,013	19,289	143,301
3	302	11,478	298,388	5,245	25.17	" " "	149,829	45,726	57,504	46,575	4,889	6,057	160,751
6	47	21,486	1,130,335	13,943	12.33	Bituminous Coal	566,253	112,584	118,366	154,101	3,499	21,802	410,353
2	8	51,746	2,807,408	12,530	5.44	Cement & Prod. Mines	328,364	32,857	35,994	171,340	2,996	22,942	266,128
7	605	22,047	1,074,574	8,947	8.33	Bituminous Coal	540,524	37,950	170,149	76,788	5,147	64,715	354,759
1	2	8,857	487,281	3,080	6.32	" "	180,457	27,027	56,179	65,576	1,739	18,482	169,003
2	280	7,570	395,762	2,617	6.62	Iron Ore	259,456	50,948	33,613	113,672		12,028	210,261
7	14	20,859	957,393	12,273	12.82	Bituminous Coal and Coke	321,373	69,033	33,027	100,268	2,658	22,128	217,115
1	6	23,988	852,251	8,164	9.58	Salt	605,327	72,720	49,099	119,836	7,342	50,885	299,887
6	308	6,114	182,516	508	3.29	Stone (Marble)	184,146	40,235	45,842	65,298	481	3,730	155,687
11	14	25,553	1,073,712	1,684	1.57	Zinc Ore and other mine prod.	183,381	44,598	17,124	81,906	8,656	10,621	163,906
6	167	51,287	2,449,861	10,848	4.43	Iron Ore	665,161	90,355	60,774	198,227	1,625	17,295	368,277

[illegible]portation

trial) for 1923

R. & Canal Co.)

Classification of operating expenses							
M. of W. & S.	M. of E.	Transportation	Traffic	General	Total operating expenses	Per cent traffic and gen. exp. of all other operating expenses	Remarks
$20,244	$89,984	$45,107	$16,704	$24,560	$212,599	24.08%	Two general officers V. P. and Secy. serve without compensation.
80,100	50,071	41,450	2,531	12,447	186,698	8.72%	Several employees joint ($\frac{1}{4}$ time) — 2 general officers serve without compensation.
76,782	16,241	66,986	2,923	57,615	220,102	37.94%	1st V. P. serves without compensation. Compensation for 8 others—$49,530.
38,601	24,853	24,549	1,884	9,385	99,253	12.81%	6 exec., gen. officers and assistants—$10,038. One assistant—$1,200.
59,923	21,456	54,021	8,954	58,054	202,409	49.49%	Traffic and gen'l exp. increased $8,761 over 1922. 5 gen. officers receive $27,285 (total) 2 div. officers rec. $6,965 (total).
85,055	24,300	48,328	3,119	25,083	185,885	11.54%	5 gen. officers receive $11,146 (total)— 2 div. officers receive $3,467 (total).
47,679	18,039	39,973	4,987	6,216	116,895	10.04%	Vice Pres. and Asst. Treas. serve without compensation.
61,745	105,756	117,885		17,943	303,329	6.28%	1st V. P. Treas. and Aud. (3) served without compensation. Sec. and Pur. Agt. (2) receive nominal compensation.
72,786	44,605	74,803	569	33,386	226,151	17.66%	4 executive and general officers received $14,880.
19,350	26,829	55,629	22,392	96,844	221,043	117.12%	11 exec. and gen. officers received $98,905 (total)
49,565	58,197	43,388	1,000	17,291	169,471	12.10%	2 general officers serve without compensation.
60,360	72,711	50,802	1,712	16,825	202,470	10.08%	2480 of 2685 shares stock owned by Campbell's Creek Coal Co., Cincinnati, Ohio.
115,486	62,927	105,412	10,041	46,518	340,384	19.93%	Traffic and gen. exp. increased $13,286 over 1922 (Road was extended in 1923).
108,147	88,686	51,359	2,635	24,009	276,836	10.65%	Pres. and Vice Pres. received no compensation.
65,140	14,693	44,166	1,013	19,289	143,301	16.39%	Treas. and Gen. Counsel did not receive any compensation.
45,726	37,304	46,575	4,889	6,037	140,731	7.29%	No data as to compensation, but road has full quota of officials.
112,584	118,366	154,101	5,499	21,802	410,353	6.57%	Controlled by Meadow River Lumber Co.—6$\frac{3}{4}$ exec. and gen. officers receive $25,630.
32,857	35,994	171,340	2,986	22,942	266,128	10.80%	Only 4 of general officers receive compensation.
37,950	170,149	76,788	5,147	64,715	354,739	24.52%	Traffic and general expenses increased $36,210 over $922 or 4010%.
27,027	59,179	65,576	1,739	18,482	169,003	13.59%	6 general officers served without compensation.
50,948	33,613	113,672		12,028	210,261	6.07%	Jointly controlled by Port Henry Iron Co. and Weatherbee, Sherman & Co.
60,033	33,027	190,268	2,658	22,128	217,115	12.88%	Seems to be owned by Mellon family, not many officials.
72,726	49,080	119,836	7,342	50,885	299,887	24.09%	6 exec. and gen. officers receive $45,000 compensation.
40,235	45,842	65,398	481	3,730	155,687	2.78%	Controlled by Vermont Marble Co.—Very few officials.—No large salaries.
44,808	17,424	81,996	8,656	10,621	163,506	13.90%	All general officers, except Aud. and Supt. are joint employes of N. J. Zinc Co. (Principal portion of salary rec. from N. J. Zinc Co.)
90,356	60,774	198,227	1,625	17,295	368,277	5.42%	Controlled by Bethlehem Steel Corp. 5 executive and gen. officers receive $28,771.

[fol. 680] EXHIBIT No. A 11

U. S. District Court, Western District of Louisiana. Filed November 19, 1926. W. B. Lee, Clerk

[fol. 681] U. S. District Court, Western District of Louisiana. Filed November 19, 1926. W. B. Lee, Clerk

Docket No. 12869—Divisions received by Brimstone Railroad & Canal Company

Exhibit No. —

Detail record of seven day test conducted May 21 to May 27, 1924, inclusive, of the work performed by locomotives of the Brimstone Railroad & Canal Company, showing time consumed in each operation and number of cars handled.

Summaries of results showing total time consumed in each movement zone, number of loaded cars handled, and average time per loaded car consumed in each zone and in interchange with connecting carriers.

Detail Record of Seven-day Test, etc.—Continued

[Fol. 982]

G. J. Gliddon Report

B. R. R. Engine No. 9

5-21-24.

Zone	Time From	Time To	Work performed	Allowance of time by: Rep. I. C. C.	Allowance of time by: B. R. R. & C. Co.
1	8:03	8:08	From Engine house to S. W. Bin	(M)	M
1	8:09	8:14	To C. L. P. Box	(P)	P
1	8:14	8:21	Empties into S. W. Bin	(P)	C
1	8:21	8:25	Switching in S. W. Bin	(P)	C
1	8:25	8:48	B. O. Cars into rip track	(C)	C
1	8:48	8:51	Back to S. W. Bin	(C)	C
1	8:51	8:54	Flat from rice W. H. to Main track	(C)	C
1	8:54	8:58	Back to S. W. Bin	(C)	C
1	8:58	9:05	Empties into N. E. Bin	(P)	C
1	9:05	10:25	Loading seven gondolas	(P)	P
1	10:25	10:30	Taking water	(M)	M
1	10:30	10:36	Back to S. W. Bin	(M)	M
1	10:36	10:40	Pulling 18 loads into clear	(P)	C
1	10:40	10:55	Pulling 21 empties into S. W. Bin	(P)	C
1	10:55	11:07	5 empties into N. E. Bin	(P)	C
1	11:07	12:12	Loading 5 gondolas in N. E. Bin	(P)	P
1	12:12	12:18	Back to S. W. Bin	(P)	P

1	12:18	12:25	3 empties to N. E. Bin	(P)	C
1	12:25	1:05	Loading 3 gondolas, N. E. Bin	(P)	P
1	1:05	1:16	Back to S. W. Bin	(P)	P
1	1:16	1:20	Pulling 4 loads into clear	(P)	C
1	1:20	1:36	12 empties into S. W. Bin	(P)	C
1	1:36	2:45	Loading 5 gondolas, S. W. Bin	(P)	P
1	2:45	2:54	5 loads to Box C. L. P.	(P)	C
1	2:54	2:57	Back to S. W. Bin	(P)	C
1	2:57	3:10	Loading 7 gondolas at S. W. Bin	(P)	P
1	3:10	3:20	Getting fuel oil car and back to S. W. Bin	(P)	P
1	3:20	3:37	Giving fuel oil to 3 & 6 loaders at S. W. Bin	(P)	P
1	3:37	3:42	Pulling 7 loads into clear	(P)	C
1	3:42	3:54	Giving fuel oil to No. 5 loader at N. E. Bin	(P)	P
1	3:54	3:57	Taking fuel oil car back to fuel oil track	(P)	P
1	3:57	4:03	Taking fuel oil for No. 9 engine	(M)	M
1	4:03	4:12	From fuel oil storage to enginehouse	(M)	M

[fol. 683]

1	8:00	8:11	Pulling 5 empty gondolas from rip track to hold track, leaving one	(C)	C
1	8:11	8:15	Pulling 4 gond. into S. W. Bin to B. C. L. P.	(P)	P

(C) Common carrier service.
(P) Intraplant switching.
(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven day Test, etc.—Continued

Zone	Time From	Time To	Work performed	Allocation of time by: Rep. I. C.	B. R. & A. Co.
1	8:15	8:40	Spotting cars for loaders at S. W. Bin	(P)	P
1	8:40	8:45	Pulling 4 loads from S. W. Bin to Box C. L. P.	(P)	P
1	8:45	8:52	Pulling empties from hold track to S. W. Bin	(P)	C
1	8:52	9:06	From S. W. Bin to hold, 5 B. O. cars to rip track	(C)	C
1	9:06	9:12	From rip track back to main	(C)	C
1	9:12	9:15	From main to S. W. Bin	(P)	P
1	9:15	9:44	Spotting cars for loaders at S. W. Bin	(P)	P
1	9:44	9:49	Pulling 8 loads from S. W. Bin to Box C. L. P.	(P)	P
1	9:49	9:52	From Box C. L. P. back to S. W. Bin	(P)	P
1	9:52	10:54	Spotting cars for loaders at S. W. Bin	(P)	P
1	10:54	10:57	Pulling 7 loads to main line	(P)	C
1	10:57	11:04	Pulling 15 empties from side track, leaving one B. O. car on hopper track	(P)	C
1	11:04	11:07	Pulling 14 empties to S. W. Bin from main	(P)	C
1	11:07	12:54	Spotting cars for loaders at S. W. Bin	(P)	P
1	12:54	12:59	Pulling 12 loads from S. W. Bin to side track by main	(P)	C
1	12:59	1:04	Back to S. W. Bin, pulling two loads to side track by main	(P)	C
1	1:04	1:06	From main to Box C. L. P. for 1 empty	(P)	P
1	1:06	1:11	From Box C. L. P. to hold, pulled 16 empties into S. W. Bin	(P)	C
1	1:11	2:41	Spotting cars for loaders	(P)	P
1	2:41	2:46	Pulled 10 loads from S. W. Bin into side track by main	(P)	C

1	2:46	2:50	From side track back to S. W. Bin	(P)	C
1	2:50	3:33	Seating gondolas for loaders	(P)	P
1	3:33	3:37	Pulling 6 loads from S. W. Bin to side track by main	(P)	C
1	3:37	3:40	From side track to fuel oil track	(P)	P
1	3:40	3:43	Taking fuel oil car from fuel track to main	(P)	P
1	3:43	3:48	Giving fuel oil to No. 6 loader	(P)	P
1	3:48	3:50	From main track back to S. W. Bin	(P)	P
1	3:50	3:54	Giving fuel oil to No. 3 loader at S. W. Bin	(P)	P
1	3:54	3:58	Taking fuel oil car from S. W. Bin to main from main to fuel oil storage tank	(P)	P
1	3:58	4:15	Taking fuel oil for No. 9 engine and oil car at fuel oil storage	(M)	M
	[fol. 684]				
1	4:15	4:18	Taking fuel oil car back to fuel oil track	(P)	P
1	4:18	4:19	From fuel oil track to main	(M)	M
1	4:19	4:30	Pulled box car from main track west of bin to warehouse side track	(C)	C
1	4:30	4:33	From warehouse side track to enginehouse	(M)	M
					5 23 24
1	8:08	8:11	Pulling 5 empty gondolas from rip track to hold track	(C)	C
1	8:11	8:15	Picked up 10 empty gondolas in hold track	(P)	C

(C) Common carrier service.
(P) Intraplant switching.
(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Zone	Time From	Time To	Work performed	Allocation of time by Rep. I. C. C.	Allocation of time by B. R. R. & C. Co.
1	8:13	8:18	Pulling 15 empty gond. from load track to S. W. Bin	(P)	C
1	8:18	8:22	From S. W. Bin to main, from main to B. O. track	(C)	C
1	8:22	8:26	Switching out B. O. Cars at B. O. Track	(C)	C
1	8:26	8:34	Pulling 4 B. O. Cars from B. O. track to rip track	(C)	C
1	8:34	8:39	Spotting B. O. cars at rip track	(C)	C
1	8:39	8:45	From rip track to main south of B. C. L. P.	(C)	C
1	8:45	8:47	From main track to box C. L. P., spotting one empty box car at loader	(P)	C
1	8:47	8:50	Back to main then to hopper track	(P)	C
1	8:50	8:55	Spotting 1 loaded gondola for hopper	(P)	P
1	8:55	8:58	From hopper track to main then to B. C. L. P.	(P)	P
1	8:58	9:06	Spotting three box cars for box car loader	(P)	C
1	9:06	9:09	From B. C. L. P. main then to hopper track	(P)	P
1	9:09	9:16	Spotting loaded gondolas for hopper	(P)	P
1	9:16	9:19	From hopper track to main then to box C. L. P.	(P)	P
1	9:19	9:25	Spotting 1 box car for B. C. loader	(P)	P
1	9:25	9:28	From box C. L. P. to main then to hopper track	(P)	P
1	9:28	9:43	Spotting 1 loaded gondola for hopper	(P)	P
1	9:43	9:46	From hopper track to main then to box C. L. P.	(P)	P
1	9:46	9:55	Spotting empty box cars for box car loader on east and west tracks	(P)	C

1	9:55	9:58	From B. C. L. P. to main then to hopper track	(P)	C
1	9:58	10:03	Spotting 1 loaded gondola for hopper	(P)	P
1	10:03	10:06	From hopper track to main then to B. C. L. P.	(P)	P

[fol. 685]

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1	10:06	10:15	Spotting empty box cars for box car loader east track	(P)	C
1	10:15	10:17	From B. C. L. P. to main then to S. W. Bin	(P)	C
1	10:17	10:21	Pulling 6 loads from S. W. Bin to main	(P)	C
1	10:21	10:23	From main back to S. W. Bin	(P)	P
1	10:23	10:27	Spotting cars for loaders at S. W. Bin	(P)	P
1	10:27	10:31	Pulling 9 loads from S. W. Bin to main	(P)	C
1	10:31	10:33	From main to hopper track	(P)	P
1	10:33	10:35	Pulling 5 empty gond. from hopper track to siding by main	(P)	P
1	10:35	10:42	Pulling 20 empty gondolas from side track to S. W. Bin	(P)	C
1	10:42	10:56	Spotting empty gondolas for loaders	(P)	C
1	10:56	11:00	Pulling one load from S. W. Bin to main then to hopper track	(P)	P
1	11:00	11:02	From hopper track to main then to Box C. L. P.	(P)	P
1	11:02	11:05	Spotting cars for B. C. loaders	(P)	P
1	11:05	11:06	From B. C. L. P. to main	(P)	P
1	11:06	11:11	Taking picture of engine	(C)	C
1	11:11	11:13	From main to S. W. Bin	(P)	P
1	11:13	11:15	Pulling 3 loads from S. W. Bin to main	(P)	P

(C) Common carrier service.
(P) Intraplant switching.

Detail Record of Seven day Test, etc.—Continued

Zone	Time From	Time To	Work performed	Allocation of time by: Rep. I. C. C.	B. R. R. & C. Co.
1	11:15	11:18	Pulling 3 loads from main to hopper track	(P)	P
1	11:18	11:22	From hopper track to main then to box car L. P.	(P)	P
1	11:22	11:37	Spotting cars for box car loaders	(P)	C
1	11:37	11:40	From B. C. L. P. to main then to hopper track	(P)	P
1	11:40	11:41	Spotting loaded gond. from hopper	(P)	P
1	11:41	11:44	From hopper track to main then to water tank	(M)	M
1	11:44	11:46	Taking water for Engine No 9	(M)	M
1	11:46	11:50	From water tank track back to hopper track	(M)	M
1	11:50	11:52	Spotting loaded gond. for hopper	(P)	P
1	11:52	11:55	From hopper track to B. C. L. P.	(P)	P
1	11:55	12:07	Spotting box cars for box C. L. P.	(P)	P
1	12:07	12:12	From B. C. L. P. to main then to S. W. Bin	(P)	P
1	12:12	12:17	Pulling 2 loaded gond. from S. W. Bin to hopper track	(P)	P
1	12:17	12:21	From hopper track to B. C. L. P.	(P)	P
[fol. 686]					5-23-24
1	12:21	12:41	Spotting box cars at B. C. L. P.	(P)	P
1	12:41	12:44	From B. C. L. P. to S. W. Bin	(P)	C
1	12:44	1:04	Spotting cars for loader	(P)	C
1	1:04	1:08	Pulling 14 loads from S. W. Bin to main	(P)	C
1	1:08	1:14	Pulling 16 empties from siding, by main to S. W. Bin	(P)	C
1	1:14	2:13	Spotting gond. for loaders at S. W. Bin	(P)	P

1	2:13	2:20	Pulling 10 loads from S. W. Bin to main track	(P)	C
1	2:20	2:21	From main to hold track	(P)	C
1	2:21	2:27	Pulling 15 empty gondolas from hold track to main then to S. W. Bin	(P)	C
1	2:27	2:30	From S. W. Bin to main then to hopper track	(P)	P
1	2:30	2:33	Pulling 1 loaded gond. from hopper track to main	(P)	P
1	2:33	2:34	From main to S. W. Bin	(P)	P
1	2:34	2:44	From S. W. Bin to main then to oil car storage track	(P)	P
1	2:44	2:48	Pulling fuel oil car from oil car track to main then to S. W. Bin	(P)	P
1	2:48	3:01	Giving fuel oil to No. 3, No. 5 and No. 6 loaders at S. W. Bin	(P)	P
1	3:01	3:03	Pulling fuel oil car from S. W. Bin to main	(P)	P
1	3:03	3:05	From main to S. W. Bin	(P)	P
1	3:05	3:50	Spotting cars for loaders at S. W. Bin	(P)	P
1	3:50	3:54	Pulling 12 loads up to main on S. W. Bin track	(P)	C
1	3:54	3:57	From main track to hold track	(P)	C
1	3:57	4:01	Pulling 9 empties from hold track to S. W. Bin	(P)	C
1	4:01	4:05	From S. W. Bin to hold track, shifting one empty car	(P)	C
1	4:05	4:12	From hold track to main, picking up one merchandise car and going to engine oil storage tank	(C)	C
1	4:12	4:17	Taking oil for engine No. 9	(M)	M

(C) Common carrier service.
(P) Intraplant switching.
(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	Allocation of time by: Rep. I. C. C.	B. R. R. & C. Co.
1	4:17	4:25	From engine oil storage to main then to warehouse sidetrack with merchandise car	(C)	C
1	4:25	4:30	From warehouse sidetrack to rip track, spotting one car	(C)	C
1	4:30	4:35	From rip track to enginehouse	(M)	M
[fol. 687]					
1	7:56	8:09	From enginehouse to rip track, pulling 2 empty gond. to main then to S. W. Bin	(C)	C
1	8:09	8:26	Spotting empties for loaders at S. W. Bin	(P)	P
1	8:26	9:30	Pulling 11 loads from S. W. Bin to main	(P)	C
1	9:30	9:32	From main to S. W. Bin	(P)	C
1	9:32	9:58	Spotting empties for loaders at S. W. Bin	(P)	C
1	9:58	10:01	Pulling 9 loads from S. W. Bin to main	(P)	C
1	10:01	10:10	Pulling 24 empties from siding by main to S. W. Bin	(P)	C
1	10:10	10:17	From S. W. to main, spotting while engine is inspected by Mr. Boltwood	(C)	C
1	10:17	10:29	Pulling 3 B. O. cars from main track to rip track	(C)	C
1	10:29	10:35	On the spot at rip track	(C)	C
1	10:35	10:45	From rip track to main then to S. W. Bin	(C)	C
1	10:45	10:51	Spotting empty gond. for loaders at S. W. Bin	(P)	C
1	10:51	10:56	From S. W. Bin to main then to engine water tank	(M)	M

1	10:56	10:58*	Taking water for Engine No. 9	(M)	M
1	10:58	11:06*	From engine water tank to main then to S. W. Bin	(M)	M
1	11:06	11:40	Spotting empty gondolas for loaders at S. W. Bin	(P)	P
1	11:40	11:42	Pulling 14 loads from S. W. Bin to main	(P)	C
1	11:42	11:45	From main to S. W. Bin	(P)	C
1	11:45	12:35	Spotting empties for loaders at S. W. Bin	(P)	P
1	12:35	12:40	Pulling 7 loads from S. W. Bin to siding by main	(P)	C
1	12:40	12:42	From siding by main to hold track	(P)	C
1	12:42	12:48	Pulling 14 empties from hold track to S. W. Bin	(P)	C
1	12:48	1:45	Spotting empty gondolas at S. W. Bin	(P)	P
1	1:45	1:49	Pulling 4 loads from S. W. Bin to main	(P)	C
1	1:49	1:52	From main back to S. W. Bin	(P)	C
1	1:52	2:01	Pulling 8 loads from S. W. Bin to siding by main	(P)	C
1	2:01	2:06	From siding by main back to S. W. Bin	(P)	C

[fol. 688]

1	2:06	2:12	Spotting empty gondolas for loaders at S. W. Bin	(P)	C
1	2:18	2:20	From main to hold track	(P)	C
1	2:12	2:18	Pulling 2 loads from S. W. Bin to main	(P)	C
1	2:20	2:25	Pulling 11 empties from hold track to S. W. Bin	(P)	C
1	2:25	2:40	Spotting empties for loaders at S. W. Bin	(P)	P

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

*4 minutes of this time transferred from Miscellaneous to intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	Allocation of time by Rep. I. C. C.	Allocation of time by B. R. R. & C. Co.
1	2:40	2:45	From S. W. Bin to main then to fuel oil car track	(P)	P
1	2:45	2:48	Pulling fuel oil car to main then to S. W. Bin	(P)	P
1	2:48	3:01	Giving fuel oil to No. 3, No. 5 and No. 6 loaders at S. W. Bin	(P)	P
1	3:01	3:31	Spotting empties for loaders at S. W. Bin	(P)	P
1	3:31	3:39	Pulling 7 loads from S. W. Bin to side track by main	(P)	C
1	3:39	3:41	From side track by main to S. W. Bin	(P)	C
1	3:41	3:45	Pulling 2 loads from S. W. Bin to side track by main	(P)	C
1	3:45	3:50	Pulling fuel oil car from main to fuel oil track	(P)	P
1	3:50	3:51	From fuel oil track to engine oil storage tank	(M)	M
1	3:51	3:57	Taking oil for No. 9 engine	(M)	M
1	3:57	4:03	From engine oil storage tank to main then to enginehouse	(M)	M
1	4:03	4:09	Switching engine No. 12 in enginehouse. From east to west track	(C)	C
[fol. 689]					5-25-24.
1	6:00	6:10*	From enginehouse to main then to Zone 3	(MC)	MC
3	6:10	6:12	To track scales	(C)	C
3	6:12	6:40	On the spot at track scales pumping water from scales	(C)	C
3	6:40	6:42	From track scales to Zone 1	(C)	C
1	6:42	6:45	On main then to fuel oil track	(C)	C
1	6:45	9:19	Spotting loaded oil cars on fuel oil track	(P)	C

1	9:19	9:25	Pulling 11 empty and 8 loaded oil cars from fuel oil track to Zone 4		
4	9:25	9:30	Pulling 19 cars to scale track leaving 11 empties	(C)	C
				(C)	C

Initial	Number
SPAX	343
SPAX	324 Empty.
SPAX	336 Oil Cars.
SPAX	540
SPAX	339
SPAX	415
SPAX	314
GATX	16075
INOX	936
LORX	310
GATX	20370
GATX	10980
GATX	29127 Loaded.
GATX	11065 OIL.
GATX	4486 Cars.
GATX	10695

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

*7 minutes assigned to Miscellaneous and 3 minutes to common carrier service.

Zone	Time From	Time To	Work performed	Allocation of time by Rep I. C. C.	Allocation of time by B. R. R. & C. Co.
			Initial GATX Number 11009		
			GATX 9073		
			GATX 14728		
4	9:30	9:35	Pulling 8 loaded oil cars back from scale track to Zone 1	(C)	C
1	9:35	9:38	From main to Zone 1 to fuel oil track with 8 loaded oil cars	(C)	C
1	9:38	9:45	On the spot at fuel oil storage	(P)	C
1	9:45	9:47	From fuel oil storage to oil car storage track getting one flat	(P)	C
[fol. 630]					
1	9:47	9:50	Pulling one flat from oil car storage track to end of main track by Bat. 4	(P)	C
	9:50	9:55	Pulling two loaded flats from end of main track to Bat. 3 spur	(P)	C
	9:55	11:55	On the spot at main	(P)	C
1	11:55	11:58	From main to N. E. Bin	(P)	C
1	11:58	12:52	On the spot at N. E. Bin	(P)	C
1	12:52	1:00	From N. E. bin to main then to engine fuel oil station	(C)	C
1	1:00	1:07	Taking fuel oil for engine No. 12	(C)	C
1	1:07	1:12	From engine fuel oil station to main then to enginehouse	(M)	M

1	1:12	1:14	From enginehouse to laboratory by warehouse	(C)	C
1	1:14	1:30	On the spot getting lubricating oil at warehouse	(C)	C
1	1:30	1:32	From warehouse to enginehouse	(C)	C
1	1:32	2:00	On the spot oiling and repairing engine No. 12	(C)	C
					5-26-24.
1	8:00	8:09	From enginehouse to main	(M)	M
1	8:09	8:12	From main to S. W. Bin	(P)	P
1	8:12	8:18	Pulling four empties from S. W. Bin to hopper track	(P)	P
1	8:18	8:22	Pulling nine empties (Gond.) from hopper track to main	(P)	P
1	8:22	8:40	Pulling 24 empty gondolas from main to S. W. Bin	(P)	C
[fol. 691]					
1	8:40	8:44	Spotting empties for loaders at S. W. Bin	(P)	C
1	8:44	8:46	From S. W. Bin to main then to fuel oil storage track	(P)	P
1	8:46	8:51	Pulling fuel oil car from fuel oil storage track to N. E. Bin	(P)	P
	8:51	8:58	Giving fuel oil to No. 2 loader at N. E. Bin	(P)	P
1	8:58	9:02	Pulling fuel oil car from N. E. Bin to fuel oil track	(P)	P
1	9:02	9:04	From fuel oil track to B. O. track	(C)	C
1	9:04	9:12	Pulling two B. O. cars from B. O. track to rip track	(C)	C
1	9:12	9:20	Switching cars on rip track	(C)	C
1	9:20	9:25	Pulling two gondolas from rip track to siding by main	(C)	C

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	Allocation of time by: Reg. I. C. C.	Allocation of time by: B. R. R. & C. Co.
1	9:25	9:27	From siding track by main to S. W. Bin	(P)	C
1	9:27	9:44	Spotting empties for loading at S. W. Bin	(P)	C
1	9:44	9:48	Pulling 2 loads from S. W. Bin to hopper track	(P)	P
1	9:48	10:00	Spotting loaded gond. for hopper	(P)	P
1	10:00	10:03	From hopper track to B. C. L. P.	(P)	P
1	10:03	10:15	Spotting box cars for box car loaders at B. C. L. P.	(P)	P
1	10:15	10:18	From B. C. L. P. to S. W. Bin	(P)	P
1	10:18	10:25	Pulling 4 loaded gond. from S. W. Bin to hopper track	(P)	P
1	10:25	10:29	From hopper track to siding by main	(P)	P
1	10:29	10:32	Pulling 2 empty gond. from siding by main to S. W. bin	(P)	P
1	10:32	10:35	From S. W. bin to hopper track	(P)	P
1	10:35	10:40	Spotting loaded gond. for hopper	(P)	P
1	10:40	10:43	From hopper track to B. C. L. P.	(P)	P
1	10:43	10:51	Spotting cars at B. C. L. P.	(P)	P
1	10:51	10:54	From B. C. L. P. to hopper track	(P)	P
1	10:54	11:10	Spotting loaded box cars for hopper	(P)	P
7	11:10	11:14	From hopper track to S. W. Bin	(P)	P
1	11:14	11:18	Spotting empties for loading at S. W. Bin	(P)	C
1	11:18	11:24	Pulling 9 loads from S. W. Bin to main	(P)	C
1	11:24	11:28	Pulling 9 empty gond. from fuel oil track, to main then to S. W. Bin	(P)	C

[fol. 692]

1	11:28	11:30	From SW bin to BCLP	(P)	P
1	11:30	11:32	Spotting box cars at BCLP	(P)	P
1	11:32	11:35	From BCLP to hopper track	(P)	P
1	11:35	11:44	Pulling empty gond. from hopper track to SW bin	(P)	P
1	11:44	11:51	From SW bin to main then to engine water tank	(M)	M
1	11:51	11:54	Taking water for Engine No. 9	(M)	M
1	11:54	11:58	From engine track to main thence to SW bin	(M)	M
1	11:58	12:02	Pulling 2 loaded gond. from SW bin to hopper track	(P)	P
1	12:02	12:05	Spotting loaded gond. for hopper	(P)	P
1	12:05	12:09	From hopper to BCLP	(P)	P
1	12:09	12:25	Spotting box cars at BCLP	(P)	P
1	12:25	12:30	From BCLP to SW bin	(P)	P
1	12:30	12:32	Spotting empties for loading at SW bin	(P)	P
1	12:32	12:37	Pulling 2 loads from SW bin to hopper track	(P)	P
1	12:37	12:40	From hopper to BCLP	(P)	P
1	12:40	12:42	Spotting box cars at BCLP	(P)	P
1	12:42	12:44	From BCLP to hold track	(P)	P
1	12:44	12:49	Pulling 10 box cars from hold track to BCLP	(P)	C
1	12:49	12:50	Spotting box cars for BCLP	(P)	C
1	12:50	12:53	From BCLP to hopper track	(P)	P
1	12:53	1:04	Spotting loaded box cars for hopper	(P)	P

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned pro-rata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	Allocation of time by Rep I.C.C.	B.R.R.&C. Co.
1	1:04	1:07	From hopper track to BCLP	(P)	P
1	1:07	1:10	Spotting box cars at BCLP	(P)	P
1	1:10	1:14	From BCLP to SW bin	(P)	P
1	1:14	1:20	Pulling 12 loaded gond. from SW bin to main, leaving 7	(P)	C
1	1:20	1:23	Pulling 5 loaded gond. to hopper track	(P)	P
1	1:23	1:26	From hopper track to SW bin	(P)	P
1	1:26	1:35	Pulling 10 loaded gond. from CW bin to main	(P)	C
1	1:35	1:40	Pulling 25 empty gond. from siding by main to SW bin	(P)	C
1	1:40	1:45	From SW bin to hopper track	(P)	P
1	1:45	1:47	From hopper track to BCLP	(P)	P
1	1:47	2:01	Spotting empties for loading at BCLP	(P)	P
1	2:01	2:03	From BCLP to hopper track	(P)	P
[fol.693]					
1	2:03	2:04	Spotting loaded gond. for hopper	(P)	P
1	2:04	2:08	From hopper track to fuel oil track	(P)	P
1	2:08	2:15	Pulling 8 empty gond. from fuel oil track to hold	(P)	P
1	2:15	2:18	From hold track to BCLP	(P)	P
1	2:18	2:20	Spotting cars for BC loader	(P)	P
1	2:20	2:22	From BCLP to hopper track	(P)	P

1	2:22	2:25	Spotting loaded gond. for hopper	(P)	P
1	2:25	2:29	From hopper track to engine water tank	(M)	M
1	2:29	2:33	Taking water for Engine No. 9	(M)	M
1	2:33	2:37	From engine water tank to main then to BCLP	(M)	M
1	2:37	2:39	Spotting box cars for loader at BCLP	(P)	P
1	2:39	2:43	From BCLP to SW bin	(P)	C
1	2:43	2:51	Pulling 14 loads from SW bin to siding by main	(P)	C
1	2:51	2:53	From siding by main to hopper track	(P)	P
1	2:53	2:56	From hopper track to BCLP	(P)	P
1	2:56	3:03	Spotting box car for loading at BCLP	(P)	P
1	3:03	3:07	From BCLP to SW bin	(P)	P
1	3:07	3:17	Spotting empty cars for loading at SW bin	(P)	C
1	3:17	3:26	Pulling 11 loaded gond. for SW bin to side track by main track	(P)	C
1	3:26	3:28	From side track by main to hold track	(P)	C
1	3:28	3:30	Pulling 8 empties from hold track to main track	(P)	C
1	3:30	3:32	From main to hopper track	(P)	C
1	3:32	3:33	Pulling 9 emptiesto main	(P)	C
1	3:33	3:39	Pulling 17 empty gond. from main to SW Bin.	(P)	C
1	3:39	3:42	From SW bin to main then to fuel oil car track	(P)	P
1	3:42	3:45	Pulling fuel oil car from fuel oil track to SW bin	(P)	P
1	3:45	3:57	Giving oil to loaders No. 2 and No. 3 at SW bin	(P)	P

(C) Common carrier service.
(P) Intraplant switching.
(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned prorata to common carrier service and intraplant switching.

Zone	Time From	Time To	Work performed	Allocation of time by Rep.	I. C. C.	B. R. & C. Co
1	3:57	4:00	Pulling fuel oil car from SW bin to main then to engine oil storage	(P)		P
1	4:00	4:12	Filling fuel car with oil at engine oil storage	(P)		P
1	4:12	4:17	Taking oil for engine No. 9 at engine oil storage	(M)		M
[fol. 624]						
1	4:17	4:23	Pulling fuel oil car from engine oil storage to main then to NE bin	(P)		P
1	4:23	4:37	Giving fuel oil to loaders No. 5 and No 6 at NE bin	(P)		P
1	4:37	4:41	Pulling fuel oil car from NE bin to fuel oil car track	(P)		P
1	4:41	4:47	From fuel car track to main then to engine shed	(M)		M
						5-27-24
1	7:55	7:58	From engine house to rip track	(M)		M
1	7:58	8:10	Pulling 1 empty from rip track to main then to SW bin	(C)		C
1	8:25	8:25	Spotting empty gond for loader at SW bin	(P)		C
1	8:25	8:30	Pulling 1 loaded gond. from SW bin to hopper track	(P)		P
1	8:30	8:33	From hopper track to BCLP	(P)		P
1	8:33	8:39	Spotting box car for loaders at BCLP	(P)		C
1	8:39	8:42	From BCLP to SW bin	(P)		P
1	8:42	8:49	Pulling 2 loaded gond. from SW bin to hopper track	(P)		P

1	8:49	8:50	Spotting loaded gond. for hopper	(P)	P
1	8:50	8:53	From hopper track to BCLP	(P)	P
1	8:53	8:55	Spotting box cars for loaders at BCLP	(P)	P
1	8:55	8:58	From BCLP to hopper track	(P)	P
1	8:58	9:03	Spotting loaded gond. for hopper	(P)	P
1	9:03	9:06	From hopper track to SW bin	(P)	C
1	9:06	9:10	Pulling 7 loads from SW bin to main	(P)	C
1	9:10	9:11	From main to hold track	(P)	C

[fol. 605]

1	9:11	9:14	Pulling 6 empty gond. from hold track to main then to SW bin	(P)	C
1	9:14	9:50	Spotting empty gond. for loaders at SW bin	(P)	C
1	9:50	9:55	Pulling 6 loads from SW bin to main	(P)	C
1	9:55	9:58	From main to SW bin	(P)	C
1	9:58	10:03	Pulling 8 loads from SW bin to main	(P)	C
1	10:03	10:04	From main to siding by main	(P)	C
1	10:04	10:18	Pushing No. 6 sulphur loader from siding by main to pipe yard	(P)	P
1	10:18	10:25	From pipe yard to main then to engine water tank	(P)	P
1	10:25	10:29	Taking water for engine No. 9	(M)	M

(C) Common carrier service.

(P) Intraplant switching.

(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned prorata to common carrier service and intraplant switching.

Detail Record of Seven-day Test, etc.—Continued

Zone	Time From	Time To	Work performed	Allocation of time by Rep. I. C. C.	Allocation of time by B. R. R. & C. Co.
1	10:29	10:35*	From engine water tank to main then to SW bin	(M)	M
1	10:35	11:02	Spotting empty gond. at SW bin	(P)	P
1	11:02	11:06	Pulling 7 loads from SW bin to main	(P)	P
1	11:06	11:08	From main to hopper track	(P)	P
1	11:08	11:09	Pulling 3 empties from hopper track to clear of main	(P)	P
1	11:09	11:12	From main to SW bin	(P)	P
1	11:12	12:40	Spotting empty gond. for loaders at SW bin	(P)	C
1	12:40	12:45	Pulling 10 loaded gond. from SW bin to siding by main	(P)	C
1	12:45	12:46	From siding by main to S W Bin	(P)	C
1	12:46	1:15	Spotting empty gond. for loaders at SW bin	(P)	C
1	1:15	1:20	Pulling 5 loads from SW bin to siding by main	(P)	P
1	1:20	1:22	From siding by main to hopper track	(P)	C
1	1:22	1:25	Pulling 3 empties from hopper track to main then to SW bin	(P)	P
1	2:25	2:53	Spotting empty gond. for loaders at SW bin	(P)	P
1	2:53	2:55	Pulling 10 loads from SW bin to main	(P)	C
1	2:55	2:57	From main to SW bin	(P)	C
1	2:57	2:58	Spotting one gond. for loaders at SW bin	(P)	C
1	2:58	3:00	From SW bin to main then to engine water tank	(M)	M
1	3:00	3:02	Taking water for engine No. 9	(M)	M
1	3:03	3:06	From engine water tank to main then to rip track	(C)	C

1	3:06	3:15	From rip track to main then to SW bin	(C)	C
1	3:15	3:17	Pulling 1 loaded gond. from SW bin to BCL track	(P)	P

[fol. 696]

1	3:17	3:20	From BCL track to main then to engine oil storage track		
1	3:20	3:24	Pulling fuel oil car from engine oil storage track to main then to SW bin	(P)	P
1	3:24	3:45	Giving fuel oil to loaders No. 2, No. 3 No. 5 and No. 6 at SW bin	(P)	P
1	3:45	3:52	Pulling fuel oil car from SW bin to main then to engine oil track	(P)	P
1	3:52	3:58	Taking fuel oil for No. 9 engine	(M)	M
1	3:58	4:10	Taking fuel oil for fuel oil car	(P)	P
1	4:10	4:11	Pulling fuel oil car from engine oil tank to fuel oil car track	(P)	P
1	4:11	4:18	From fuel oil car track to main then to engine house	(M)	M

(C) Common carrier service.
(P) Intraplant switching.
(M) Miscellaneous—Taking fuel, water, going to and returning from work, apportioned prorata to common carrier service and intraplant switching.

*The time of Engine No. 9 from 10:29 A. M. to 10:35 A. M., going from water station to SW bin, was assigned 4 minutes to miscellaneous and 2 minutes to intraplant switching, on account of preceding switching movements.

Detail Record of Seven-day Test, etc.—Continued

[fol. 627] Time of Yard Locomotive No. 9 and Road Locomotive No. 10 spent in each zone each day during test period, May 21 to May 27, 1924, inclusive. (Time of Locomotive No. 10 taken from pages 17 to 47 of Exhibit No. 2, prepared by representative of the I. C. C.)

Yard Locomotive No. 9: Time spent in each zone each day, shown in minutes

Date	Zone 1, yard zone	Zone 2, S. P. connection	Zone 3, weighing zone	Zone 4, K. C. S. running zone	Zone 5, K. C. S. connection	All zones
May 21, 1924	492					492
May 22	513					513
May 23	515					515
May 24	493					493
May 25 (Sunday)	435		32	13		480
May 26	527					527
May 27	503					503
Total Test period	3,478		32	13		3,523

[fol. 698] Summary of time of Yard Locomotive No. 9 during Test P

Date	Common carrier switching (minutes)		Intraplant switching (minutes)		Miscellaneous turning	Total Miscellaneous time (minutes)
	I C C	B R R & C Co.	I C C	B R R & C Co.		
May 21, 1924	33	126	424	331	35	
May 22	42	90	450	402	21	
May 23	63	212	433	284	19	
May 24	54	176	415	293	24	
May 25 (Sunday)	120	465	348	3	12	
May 26	23	148	458	333	46	
May 27	25	242	450	233	28	
Totals	360	1459	2978	1879	185	

[fol. 699] Time of Yard Locomotive No. 9 spent in each zone during t

Yard Locomotive No. 9: Time spent in each

Zone 1, yard zone

Date	Common carrier switching		Intraplant switching		Total Zone	
	I C C	B R R & C Co.	I C C	B R R & C Co.		
May 21, 1924	36	136	456	356	492	
May 22	44	94	469	419	513	
May 23	65	220	450	295	515	
May 24	57	185	436	308	493	
May 25 (Sunday)	78	431	357	4	435	
May 26	25	162	502	365	527	
May 27	27	256	476	247	503	
Total test period	332	1484	3146	1994	3478	

e No. 9 during Test Period divided between Common Carrier Switching and Intraplant Switching

Miscellaneous—Taking fuel, water, going to and returning from work. Apportioned to common carrier switching and intraplant switching

Miscellaneous time apportioned to										
ntraplant ing (minutes)	Total Miscellaneous time (minutes)	Common carrier switching (minutes)		Intraplant switching (minutes)		Total common carrier switching (minutes)		Total intraplant switching (minutes)		Total time: All services (minutes)
B R R & C Co.		I C C	B R R & C Co	I C C	B R R & C Co	I C C	B R R & C Co	I C C	B R R & C Co	
331	35	3	10	32	25	36	136	456	356	492
402	21	2	4	19	17	44	94	469	419	513
284	19	2	8	17	11	65	220	450	295	515
293	24	3	9	21	15	57	185	436	308	493
3	12	3	11	9	1	123	476	357	4	480
333	46	2	14	44	32	25	162	502	365	527
233	28	2	14	26	14	27	256	476	247	503
1879	185	17	70	168	115	377	1529	3146	1994	3523

n each zone during test period divided between common carrier switching and intraplant switching

Time spent in each service in each zone during test period, shown in minutes

						All zones				
raplant hing			Zone 3, weighing zone common carrier switching	Zone 4, K C S running zone com mon carrier switching		Common carrier switching		Intraplant switching		
B R R & C Co	Total Zone	Zone 2 S P connection			Zone 5, K C S connection	I C C	B R R & C Co	I C C	B R R & C Co	Total
356	492					36	136	456	356	492
419	513					44	94	469	419	513
295	515					65	220	450	295	515
308	493					57	185	436	308	493
4	485		32	13		123	476	357	4	480
365	527					25	162	502	365	527
247	503					27	256	476	247	503
1994	3478		32	13		377	1529	3146	1994	3523

[fol. 700]

Time of Yard Locomotive No

Yard Loco

Date	Transportation service	Zone 1 Yard Zone Miscellaneous carrier service		T ca ser po
	ICC	BRR&CCO	ICC	BRR&CCO	ICC
May 21, 1924	36	130			36
May 22,	44	94			44
May 23,	65	220			65
May 24,	57	185			57
May 25, (Sunday)	7	360	(a) 71	71	78
May 26,	25	162			25
May 27,	27	256			27
Total Test Period	261	1413	(a) 71	71	332

(a) Includes time spent in
(b) Time spent in pumping

o. 9 spent in common carrier switching during test period divided between transportation service and miscellaneous carrier service

omotive No. 9—Time spent in transportation service and miscellaneous carrier service shown in minutes

Total carrier itching one 1	Zone 2	Zone 3		Zone 4		Zone 5		ALL ZONES	
	S. P. connection	Weighing zone Miscellaneous carrier service		K. C. S. running zone Transportation service		K. C. S. connection	Transportation service	Miscellaneous carrier service	Total common carrier switching all zones
BRR&CCO		ICC	BRR&CCO	ICC	BRR&CCO			ICC	BRR&CCO
136								36	136
94								44	94
220								65	220
185								57	185
431		(b) 32	32	13	13			123	476
162								25	162
256								27	256
1484		(b) 32	32	13	13			377	1529

aking fuel oil for locomotive No. 12, getting lubricating oil, and oiling and repairing locomotive No. 12
water from track scales

I. 701] Summary showing number of loaded cars handled by Brimstone Rail

(Number cars handled by Engine No. 10

Zone Number and Description	Locomotive No. (See Note)	May 21		M
		Cars	Minutes	Cars
1. Yard Zone (Union Sulphur	10	88	162	62
Co. yard)	9		136	
2. Southern Pacific Connection	10	53	70	55
3. Weighing Zone	10	79	138	50
4. Running Zone for all K. C. S.	10	31	37	16
and some S. P. movements	9			
5. Kansas City Southern Connection	10	16	73	16
Total—All Zones			616	

NOTE.—Locomotive No. 10 is a road locomotive. This locom
Company plant does not load sulphur on Sundays.

Locomotive No. 9 is a yard locomotive. This locomotive p
facilities of the Union Sulphur Company. On Sunday, when the

oad & Canal Company du ing seven-day test, May 21 to 27, 1924, inclusive; total locom otive time consumed in common carrier transportation service; and average time per car per zone.

and time consumed taken from Sheet No. 52, Exhibit No. —, prepared by representative of I. C. C.)

22	May 23		May 24		May 25 (Sunday)		May 26		May 27		Total		Average minutes per car
Minutes	Cars	Minutes	Cars	Minutes	Cars	Minutes	Cars	Minutes	Cars	Minutes	Cars	Minutes	per zone
156	109	141	88	185			85	106	95	181	527	991	4 56167
94		230		185		300		162		256		1413	
82	69	71	71	79			54	98	60	65	362	465	1 28453
144	67	155	65	139			61	115	69	157	391	848	2 16880
17	42	45	24	42			43	24	18	18	174	183	
						13						13	1 12644
81	42	145	24	95			43	77	18	59	159	530	3 33333
574		777		725		373		642		736		4443	8 43074

tive performs road haul work and train switching, including weighing cars. This locomotive did not work on May 25, as the Union Sulphur

forms yard switching, including intraplant switching, within the limits of the Yard Zone (No. 1), which embraces the plant, tracks and ad locomotive is not on duty, this locomotive does such switching outside of the limits of the Yard Zone as may be required.

Road Locomotive No. 10: Time spent in each zone each day, shown in minutes

Date	Zone 1. yard zone	Zone 2. S. P. connection	Zone 3. weighing zone	Zone 4. K. C. S. running zone	Zone 5. K. C. S. connection	All zones
May 21, 1924	162	70	138	37	73	480
May 22	156	82	144	17	81	480
May 23	141	71	155	45	145	557
May 24	185	79	139	42	95	540
May 25 (Sunday)	No Work Performed on Sunday.					
May 26	166	98	115	24	77	480
May 27	181	65	157	18	59	480
Total Test period.	991	465	848	183	530	3,017

(Here follow side folio pages 698, 699, 700, and 701)

[fol. 702] Summary showing average time consumed per loaded car interchanged with the Southern Pacific and Kansas City Southern Connections, respectively, during the test period, May 21 to May 27, 1924, inclusive

Average time per loaded car interchanged with Southern Pacific:

	Total time consumed, minutes
8 cars (in) x 5.8462 min. per car (zones 2-1)	40.9234
4 cars (in) x 8.015 min. per car (zones 2-3-1)	32.060
334 cars (out) x 8.015 min. per car (zones 1-3-2)	2,677.010
15 cars (out) x 9.14144 min. per car (zones 1-4-3-2)	137.1216
1 car (out) x 8.015 min. per car (zones 1-3-2 Hold track)	8.015
6 cars (out) x 6.73047 min. per car (zones 1-3)	40.38282
368 cars total — Total time	2,935.51282
Average time per loaded car	7.97694

Average time per loaded car interchanged with Kansas City Southern:

	Total time consumed, minutes
128 cars (in) x 9.02144 min. per car (zones 5-4-1)	1,154.74432
31 cars (out) x 11.19024 min. per car (zones 1-3-4-5)	346.89744
159 cars total — Total time	1,501.64176
Average time per loaded car	9.44428

Average time per loaded car interchanged with both connections:

Total cars loaded 527 Total time consumed 4,437 Min.

Average time per loaded car 8.41935 Min.

[fol. 703] EXHIBIT No. A-12

Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

Docket No. 12969—Divisions Received by Brimstone Railroad & Canal Company

[fol. 704] Brimstone Railroad and Canal Company

Statement Showing Value of the Brimstone Railroad and Canal Company Based on Cost of Reproduction New, Plus Working Capital, Material and Supplies and Plus Going Concern Value

Cost to Reproduce New The Brimstone Railroad and Canal Company as of December 31st, 1923	$590,733 00
Estimated amount to cover Working Capital, Material and Supplies	$28,913 00
Amount to cover "Going Concern" value—7.5% of $585,733.00	$43,930 00
Value	$663,576 00

[fol. 705] Brimstone Railroad and Canal Company

Statement Showing Value of the Brimstone Railroad and Canal Company Based on Cost of Reproduction New, Less Depreciation, Plus Working Capital Material and Supplies and Plus Going Concern Value

Cost to Reproduce New The Brimstone Railroad and Canal Company as of December 31st, 1923	$590,733 00
Less 22% to cover Depreciation	129,961 00
Cost New Less Depreciation	$460,772 00
Estimated amount to cover Working Capital, Material and Supplies	$28,913 00
Amount to cover "Going Concern" value—7.5% of $585,733.00	$43,930 00
Value	$533,615 00

The Brimstone Railroad and Canal Company

Cost of Reproduction New as of 12-31-1923

Account	Cost new as of 6-30-1918 1914 unit costs	1923 Index	A & B Cost new as of 1923	A & B Retirements 6-30-1918 to 12-31-1918	A & B Retirements 6-30-1918 to 12-31-1918	1923 Index	Equated to 1923	A & B 1919
1 Engineering	$3,658 00	194	$7,097 00					
2 Land	6,922 00		6,922 00					
3 Grading	16,141 00	150	24,211 00					
6 Bridges, trest. and culv	4,592 00	201	9,230 00					
9 Ties	17,733 00	156	27,663 00					
9 Rail	23,887 00	150	35,830 00					
10 Other track material	3,908 00	188	7,347 00					
11 Ballast	7,815 00	188	14,692 00					
12 Track Laying and Surf	9,721 00	203	19,734 00					
13 Right-of-way Fences	48 00	201	96 00					
15 Crossings and Signs	1,548 00	201	3,111 00					
16 Station and Off. Bldgs	4,650 00	201	9,347 00					
17 Roadway Buildings	300 00	201	603 00					
26 Telegraph and Tele. Lines								143 00
37 Roadway Machines	606 00	188	1,139 00					
38 Roadway Small Tools	125 00	188	235 00					
44 Shop Machinery and Tools								
Total Road	$101,654 00		$167,257 00					
51 Steam Locomotives	32,046 00	224	72,007 00					
53 Freight Cars	124,155 00	203	252,035 00	$77,092 00		82	$63,215 00	$95,130 00
Total Equipment	$156,201 00		$324,042 00				$63,215 00	

71 to 75 and 77	General Expenditures	1,427 00
76	Interest During Construction	8,836 00
	Total General Expenditures	$10,263 00
	Grand Total	$268,118 00

[fol. 707] Account	Retirements 1919	1923 Index	Equated to 1923	A. & B. 1920	Retirements 1920	1923 Index	Equated to 1923	A. & B. 1921	Retirements 1921	1923 Index
1					$90 00		$175 00			
2										
3					466 00		661 00			
6										
8					533 00		831 00			
9				2,136 00	1,026 00	98	554 00			
10				1,053 00	237 00	80	397 00			
11										
12				35 00	305 00	85	589 00			
13										
15										
16										
17		95	$136 00							
26										
37										
38										
44										
			$136 00				$1,305 00			
51										
53	$71,138 00	76	$72,000 00	$158,322 00	$35,040 00	74	$46,028 00	$21,987 00		116
			$72,111 00				$46,028 00			
71										
76										

[Fol. 708] Account	Equated to 1923	A & B 1922	Retirements 1922	1923 Index	Equated to 1923	A & B 1923	Retirements 1923	Net	Total
1						5 00		5 00	$6,927 00
2									6,922 00
3									23,550 00
6									9,230 00
8									26,832 00
9									36,384 00
10									7,744 00
11						2,118 00		2,118 00	16,810 00
12						607 00		607 00	19,752 00
13									96 00
15									3,111 00
16						261 00		261 00	9,608 00
17						119 00		119 00	858 00
36						235 00		235 00	235 00
37									1,139 00
38									235 00
44						4,217 00		4,217 00	4,217 00
								$7,562 00	$173,650 00
51		$23,234 00		110	$25,558 00	$17,000 00	$14,528 00	$15,543 00	$82,022 00
53	$25,505 00								314,672 00
	$25,505 00				$25,558 00			$15,543 00	$396,694 00
71									2,501 00
76									17,888 00
									$20,389 00
Grand Total									$590,733 00

Notes Where "Index" as shown it should be understood to apply only to Additions. Retirements affect property existing in 1918 and as it has been increased by the 1923-1914 Index it is necessary to retire an equal amount. All property existing prior to 1923 is equated to the 1923 plane of prices.

[fol. 709] Brimstone Railroad and Canal Company

Statement Showing Material and Supplies and Working Capital on Hand December 31st, for the Years 1918 to 1924, Inclusive

Year	Material & supplies	Cash
1918	$4,667 00	$41,034 00
1919	25,618 00	53,414 00
1920	10,077 00	39,339 00
1921	3,795 00	18,323 00
1922	3,164 00	29,509 00
1923	8,909 00	5,076 00
1924	12,881 00	66,791 00
	$69,111 00	$253,486 00
Average	$9,874 00	$34,794 00

[fol. 710] Exhibit No. A-13

U. S. District Court, Western District of Louisiana. Filed Nov. 19, 1926. W. B. Lee, Clerk

[fol. 711] Docket No. 12969—Divisions Received by Brimstone Railroad & Canal Company

Exhibit No. —

This exhibit consists of two parts, as follows:

Part No. 1

Operating expenses, taxes, joint facility and equipment rents for calendar year, 1923, as they appear on the books of the Brimstone Railroad & Canal Company and the adjustment of these expenses, which, in the opinion of the Brimstone Railroad & Canal Company, should be made to reflect the reasonable and necessary cost of operation in that year, including the cost of intraplant switching.

Amortization of Investment in road accounts.

Return on investment in road and equipment based on cost of reproduction new as of December 31, 1923, plus materials and supplies and working capital and going concern value as of that date.

Return on investment in road and equipment based on cost of reproduction new, less depreciation as of December 31, 1923, plus materials and supplies and working capital and going concern value as of that date.

Summary of total reasonable and necessary cost of operation in 1923 including intraplant switching for Union Sulphur Company, based on expenses as above adjusted including Amortization Fund for investment in road accounts and interest on investment.

Part No. 2

Separation of total reasonable and necessary cost of operation in 1923, between common carrier service and intraplant switching, embracing formula for segregating the cost of intraplant switching, factors used in making such segregation, and summary of results.

Part I

[fol. 713] Docket No. 12969

Statement showing operating expenses, taxes, joint facility and equipment rents of the Brimstone Railroad & Canal Company for the year ended December 31, 1923, as they appear on the books of that company, and the adjustments made of these expenses to reflect the reasonable and necessary cost of operation in that year, including intraplant switching for The Union Sulphur Company

Account No.	Item	Operating expenses as reported	Adjustments		Operating expenses as adjusted
			Item No.	Amount	
	Maintenance of Way and Structures:				
1201	Superintendence	$2,301 72			$2,301 72
1202	Maintaining Roadway and Track	17,927 84	1	—$4,066 59	13,861 25
1204	Maintaining Ancillary Structures	1,560 87			1,560 87
1205	Depreciation of Way and Structures	16 33			16 33
1207	Other Way and Structure Expense	665 24			665 24
1208	Maintaining Joint Tracks, Yards and Other Facilities, Dr.	13,772 15	2	—3,547 95	10,224 20
	Total Maintenance of Way and Structures	$36,244 15		—$7,614 54	$28,629 61

Statement showing operating expenses, taxes, joint facility and equipment rents of the Brimstone Railroad & Canal Company for the year ended December 31, 1923, etc.—Continued

Account No.	Item	Operating expenses as reported	Adjustments		Operating expenses as adjusted
			Item No.	Amount	
	Maintenance of Equipment:				
1221	Superintendence	$1,813 45	..	.....	$1,813 45
1222	Repairs of Machinery and Other Apparatus	84 35		....	84 35
1223	Depreciation of Machinery and Other Apparatus	313 59		.....	313 59
1224	Locomotive Repairs	8,974 26	3	—5,000 00	3,974 26
1225	Locomotive Depreciation and Retirements	1,301 56	4	5,427 33	6,728 89
1226	Car Repairs	36,319 13	5	—436 00	32,777 89
			6	—3,105 24	.....
1227	Car Depreciation and Retirements	41,174 42	7	—7,517 45	33,656 97
1235	Other Equipment Expenses	3 32	..	.....	3 32
	Total Maintenance and Equipment	$89,984 08		—$10,631 36	$79,352 72
	Traffic:				
1251	Traffic Expenses	$16,704 56	..	.....	$16,704 56
	Transportation—Rail Line:				
1261	Superintendence and Dispatching	$333 53		.....	$333 53
1262	Station Service	6,471 57		.....	6,471 57

1264 Other Yard Employees	1,200 00			1,200 00
1270 Train Enginemen and Motormen	6,255 64			6,255 64
1271 Fuel for Train Locomotives	16,603 00			16,603 00
1273 Other Train Locomotive Supplies and Expenses	4,934 17			4,934 17
1274 Trainmen	8,119 53			8,119 53
1275 Train Supplies and Expenses	199 16			199 16
1277 Loss and Damage	3 05			3 05
1278 Other Casualty Expenses	59 23			59 23
1279 Other Rail Transportation Expenses	927 81			927 81
Total Transportation—Rail Line	$45,106 69			$45,106 69

[fol. 714]

General:

1291 Administration	$20,742 92			$20,742 92
1292 Insurance—General	863 71			863 71
1293 Valuation Expenses	2,408 91			2,408 91
1294 Other General Expenses	544 32			544 32
Total General Expenses	$24,559 86			$24,559 86

Statement showing operating expenses, taxes, joint facility and equipment rents of the Brimstone Railroad & Canal Company for the year ended December 31, 1923, etc.—Continued

Account No	Item	Operating expenses as reported	Adjustments Item No	Adjustments Amount	Operating expenses as adjusted
	Summary of Operating Expenses				
	Maintenance of Way and Structures	$36,224 15		—$7,614 54	$28,629 61
	Maintenance of Equipment	89,984 08		—10,631 36	79,352 72
	Traffic	16,704 56			16,704 56
	Transportation—Rail Line	45,106 69			45,106 69
	General	24,559 86			24,559 86
	Total Railway Operating Expenses	$212,599 34		—$18,245 90	$194,353 44
	Operating Expenses, Taxes, Joint Facility and Equipment Rents				
	Operating Expenses			$212,599 34	$194,353 44
	Tax Accruals			24,928 89	13,821 61
	Joint Facility Rents			3,289 34	3,289 34
	Equipment Rents:				
	Hire of Freight Cars—Cr. Balance	$22,035 34			3,289 34
	Rent for Locomotives	594 13		Cr. 21,441 21	Cr. 21,441 21
	Total Operating Expenses, Taxes Joint Facility and Equipment Rents			$219,376 36	$190,023 18

[fol. 715] Basis of Adjustments of the 1923 Operating Expenses of the Brimstone Railroad & Canal Company

Maintenance of Way and Structures

Account 1202—Maintaining Roadway and Track, Item No. 1, Amount $4,066.59

From October to December, 1920, the Brimstone Railroad & Canal Company relaid a portion of its road with ninety-pound rail in place of sixty-pound rail, and charged the entire cost to property investment. In adjusting this error in 1923 the carrier transferred the following charges from investment in road and equipment to operating expenses:

Rails	$2,410 56
Other Track Material	1,656 03
Total	$4,066 59

As these charges relate to another period and form no part of the actual expenses in 1923, they have been excluded in the adjustment of the 1923 expenses for the purpose of arriving at the reasonable and necessary cost of operation in that year.

[fol. 716] Account 1208—Maintaining Joint Tracks, Yards and Other Facilities—Dr. Item No. 2, Amount $3,547.95

The Brimstone Railroad & Canal Company, use jointly with the Union Sulphur Company certain yard tracks of the latter company aggregating about 3.88 miles. On January 1, 1923, a written agreement covering the joint use of the tracks was entered into by the two companies whereby the Brimstone leased certain of the tracks, shown in blue on the map in Exhibit No. —, aggregating 2.76 miles, at an annual rental of $3,185.98 and assumed the entire cost of maintenance of the leased tracks. This agreement provides that in addition to the lease of the tracks colored in blue, the Brimstone shall have the right to use for the same consideration recited above, certain other tracks of the Sulphur Company, for the purpose of reaching various

terminal facilities, but with the understanding the Brimstone Company shall not be required to maintain the tracks so colored in green.

During the year 1923 the Brimstone Company placed on its books a charge of $13,772.15 for the maintenance of the tracks covered by the aforesaid contract. This cost was arrived at on a percentage basis of the cost of maintenance of all tracks of the Sulphur Company. However, a record was kept of the actual cost of maintaining the tracks in question from February to December, 1923, inclusive, which amounted to $9,474.20. Estimating the January, 1923, maintenance on basis of February and December, 1923, actual maintenance cost an actual maintenance cost of $10,224.20 is determined for the entire year 1923. Inasmuch as $13,772.15 was charged to operating expenses for maintenance of these tracks during 1923 while the actual maintenance cost was $10,224.20 there is an over-charge of $3,547.95 in operating expenses for which adjustment is allowed.

[fol. 717] Maintenance of Equipment

Account 1224—Locomotive Repairs.—Item No. 3, Amount $5,000.00

In April, 1923, the Brimstone Railroad & Canal Company purchased from The Union Sulphur Company three small second-hand locomotives for which it paid the following amounts:

Engine No.	Cost
9	$5,000 00
11	3,500 00
12	3,500 00
Total Cost	$12,000 00

Evidently these locomotives were in very poor physical condition when purchased, as it was necessary to make extensive repairs to each in order to bring it up to the standard required, one being immediately placed in the shop for repairs while the other two were required to perform service. Engine 12 was the first to undergo extensive repairs,

being turned out of the shop in July, 1923. Then engine 9 was shopped for extensive repairs, which were completed in October, 1923. Engine 11 was in the shop for general repairs in May, 1924.

The rules of the Commission governing the "Classification of Investment in Road and Equipment of Steam Roads," provide in respect to General Account II, "Equipment," as follows:

"When second-hand equipment acquired is in such physical condition that it is necessary to make extensive repairs to it to bring it up to the standard required by the carrier, the cost of such repairs shall be included in the account appropriate for the cost of the equipment. A comprehensive statement of the amount estimated to be necessary to rebuild second-hand equipment in accordance with the above provision shall be furnished to the Commission as soon as the estimate is made."

The Brimstone erroneously included the cost of rehabilitating two of these second hand locomotives in 1923 in operating expense account 1224, "Locomotive repairs," instead of in the appropriate investment account. As a basis for adjusting the operating expenses to correct this error, a request was made upon the Brimstone for information [fol. 718] showing the cost of repairs made to each locomotive in 1923, subdivided as between (a) running repairs and (b) classified repairs, with a brief statement of the nature and extent of classified repairs to each locomotive.

The cost of repairs allocated to these three second-hand locomotives in 1923, as contained in the Brimstone's answer to this request, as shown in the following table:

Month	Engine No. 9			Engine No. 11			Engine No. 12		
	Labor	Material	Total	Labor	Material	Total	Labor	Material	Total
Jan.	.....	.....	.....	.....	.....	.....	.....	.....	.....
Feb.	.....	.....	.....	.....	.....	.....	.....	.....	.....
March	$9 75	.....	$9 75	.....	.....	.....	$3 25	.....	$3 25
April	27 94	$9 75	37 69	$28 46	$17 82	$46 28	377 71	$2 44	380 15
May	105 24	22 98	128 22	28 89	8 13	37 02	579 81	126 69	705 50
June	54 79	1 12	55 91	35 42	11 77	47 19	516 30	328 02	844 02
July	432 07	39 44	471 51	131 72	26 18	157 90	142 82	353 01	495 83
August	625 91	582 31	1,208 22	122 58	34 49	157 07	40 90	.55	41 45
Sept.	201 83	66 26	268 09	5 59	.....	5 59	25 81	.95	26 76
Oct.	31 16	195 22	226 38	.....	.....	.....	40 34	.49	40 83
Nov.	44 16	1 33	45 49	123 81	11 10	134 91	4 35	.....	4 35
Dec.	29 52	.....	29 52	240 80	12 90	262 70	15 90	1 10	17 00
Total	$1,992 37	$918 41	$2,580 78	$726 27	$122 39	$848 66	$1,747 19	$812 95	$2,560 14

In addition to the labor and material charges actually allocated to the repairs of the three second-hand locomotives purchased from the Union Sulphur Company shown in the preceding table, and to the two other locomotives owned by the Brimstone, there were charges to locomotive repairs in 1923 aggregating $738.35 on account of miscellaneous items of material not allocated to any of the locomotives. While it is impossible to identify in the statement furnished by the Brimstone the actual charges which should properly have been included in investment, it was estimated that such cost amounted to not less than $5,000.00 for the two second-hand locomotives rehabilitated in 1923. This estimate was based on the heavier charges to locomotives Nos. 9 and 12 in 1923, and was also based upon the assumption that a part of the miscellaneous material not allocated to any of the locomotives, was used in the extensive repairs to these two units. Account 1224, "Locomotive Repairs," has therefore been adjusted by the deduction of $5,000.00 to cover the extensive repairs aforesaid, erroneously charged to operating expenses instead of to investment in steam locomotives.

[fol. 719] Account 1225—Locomotive Depreciation and Retirements, Item No. 4, Amount $5,427.33

In November, 1923, the Brimstone accounted for the retirement of locomotives Nos. 4 and 8, as follows:

Account	Dr.	Cr.
619—Loss on Retired Road and Equipment	$5,904 46	
716—Material and Supplies	3,500 20	
776—Accrued Depreciation—Equipment	10,091 86	
51—Steam Locomotives		$18,261 46
309—Steam Locomotives—Depreciation		1,235 06
	$19,496 52	$19,496 52

The amount credited to Account 309 represents depreciation in reserve in excess of service loss on Engine No. 4, while the amount charged to Account 619 covers loss of

service value on Engine No. 8 in excess of depreciation in reserve with respect to this unit.

In accordance with the regulations of the Interstate Commerce Commission the Brimstone should have charged to profit and lost the service loss applicable to the period prior to July 1, 1907, determined by a prorate based on life in service prior and subsequent, respectively, to that date, and to operating expense account 310, "Steam Locomotives—Retirements," the loss of service value similarly found applicable to the period subsequent to July 1, 1907, less depreciation in reserve with respect to this period. On this basis the retirement accounting should have been as follows:

Locomotive No. 4:

This unit was acquired in December, 1905, at a cost of $6,864.60, and was retired in November, 1923, salvage valued at $1,442.65 being recovered. Depreciation in reserve with respect to this unit for the period subsequent to July 1, 1907, amounted to $6,657.01. Including both the month in which acquired and that in which retired in the service life of this unit, its retirement should have been accounted for as follows:

Account	Dr	Cr
619—Loss On Retired Road and Equipment	$477 13	
716—Material and Supplies (Salvage)	1,442 65	
776—Accrued Depreciation—Equipment	6,657 01	
310—Steam Locomotives — Retirements		$1,712 19
51—Steam Locomotives		6,864 60
	$8,576 79	$8,576 79

[fol. 729] Locomotive No. 8:

This unit was acquired in October, 1917, at a cost of $11,286.86, and was retired November, 1923, the value of salvage recovered being $2,057.55. Depreciation in reserve with respect to this unit for the period subsequent to July

1, 1907, was $3,434.85. The accounting for this retirement should have been as follows:

Account	Dr.	Cr.
716—Material and Supplies	$2,057 55	
776—Accrued Depreciation—Equipment	3,434 85	
310—Steam Locomotives—Retirements	5,904 46	
51—Steam Locomotives		$11,396 86
	$11,396 86	$11,396 86

Summary

The 1923 operating expenses were understated by $5,427.33 as follows:

Amount Chargeable to Account 310 (Account of Locomotive No. 8)		$5,904 46
Less Difference Between:		
Credit Includable In Account 310 (Account Locomotive No. 4)	$1,712 19, and	
Credit included in Account 309	1,235 06	477 13
		$5,427 33

Account 1225, "Locomotive Depreciation and Retirements," has been adjusted accordingly by the addition of $5,427.33.

Account 1226—Car Repairs, Item No. 5, Amount $436.00

In April, 1923, the Brimstone Company started replacing cast iron wheels under its cars with steel wheels, as occasion demanded. This was not adopted as a general program of improvement but only as replacement when ordinary maintenance required replacement of a wheel or wheels. Generally speaking no one car is fully equipped with a complete set of steels wheels at one time. Usually the change involves one pair of wheels only. In the absence of a regular improvement program and as the dif-

ference between the cost of the new steel wheels and the cost to replace with wheels in kind is below the minimum of $100.00 established by the Commission, the entire cost of the wheels and labor applying them is a proper charge to operating expenses.

However, during 1923, no credit was allowed for the salvage value of the cast iron wheels removed. During the year there were 138 cast iron wheels removed. Their weight was 725 pounds per wheel.

[fol. 721]

138 Wheels Times 725 Lbs. ea.	100,050 Lbs., or 44.1 Gross Tons	
44.1 G. T. @ $18.50 (Scrap Price, 1923)		$815 85
Less		
Freight to St. Louis $7.85 G. T.	$346 19	
Handling Cost	33 66	
		379 85
Net Salvage Value		$436 00

Adjustment has been made to allow operating expenses credit for the salvage value of the 138 cast iron wheels removed.

Account 1226—Car Repairs, Item No. 6, Amount $3,105.24

Notwithstanding the regulations of the Interstate Commerce Commission to the contrary, it has been the practice of the Brimstone to charge all of the material and supplies as purchased direct to the primary expense or other accounts that would ordinarily be charged at the time the material was actually used or applied, except maintenance of way material such as cross and switch ties, rails and other track material. A material and supplies account is kept for the maintenance of way material, and an inventory is taken each month and the books are adjusted on the basis of such material actually found to be on hand. However, no record was kept by the Brimstone of the amount and value of the material remaining on hand on December 31, 1923, which had previously been charged to car repairs but not consumed in such repairs prior to that date. It was possible, however, to closely approximate the amount and value of the material on hand December 31, 1923, from the

record of material purchased and consumed. The estimated material on hand and its value was:

600 Grab Irons	$150.00
62 Steel Car Wheels	2,544 48
8 5½x10 Journal Boxes	90 96
8 G-132 Friction Center Blocks	14 80
16 G-131 Friction Side Blocks	24 00
6 G-138 Friction Boxes	37 80
12 G 70 Spring Barrels	178 20
100 Brake Shoes	65 00
	$3,105 24

Adjustment has therefore been made of this amount in operating expenses under this account.

[fol. 722] Account 1227—Car Depreciation and Retirements

Item No. 7. Amount $7,517.45

During 1919 and 1920 the Brimstone rebuilt a large number of its gondola cars in the 100 and 400 series, most of this work being done by private contractors. Originally the entire cost of this work was charged to Investment Account 53, "Freight Train Cars," including freight charges paid and minor repairs required in connection with moving the cars to the shops on their own wheels. In January, 1923, the Brimstone adjusted its accounts with respect to the cost of these repairs and freight charges on cars en route to the shops by crediting the investment account and concurrently charging operating expenses, "Freight Train Cars—Retirements." These lap-over items included in the 1923 expenses, to cover the freight and repair costs in question, aggregated $7,517.45, of which amount $3,910.27 was applicable to 1919, and $3,607.18 to 1920.

As these charges in the 1923 accounts do not reflect expenses incurred in that year and were included therein merely for the purpose of adjusting previous accounting errors, the sum of $7,517.45 has been deducted from Account 1227, "Car Depreciation and Retirements," for the purpose of arriving at the reasonable and necessary cost of operation in 1923.

[fol. 722a] Taxes:

Taxes reported by Brimstone Railroad & Canal Company for calendar year 1923 consisted of the following:

Taxes Assessed in the State of Louisiana		$13,641 55
U. S. Government Taxes:		
Capital Stock Tax	$411 00	
Income Tax	10,876 34	
		11,287 34
Total		$24,928 89

Adjustments:

The taxes as above reported include non-operating as well as operating taxes. Excluding U. S. income tax, and other non-operating taxes, the operating taxes during 1923 were as follows:

Taxes on Road and Equipment:		
Road	$4,843 88	
Equipment	8,566 73	
		$13,410 61
Capital Stock Tax		411 00
Total Operating Taxes		$13,821 61

Taxes have been adjusted accordingly to include operating taxes only.

Joint Facility Rents:

Joint Facility Rents		$3,289 34

Equipment Rents:

Hire of Freight Cars:

Freight Cars Interchanged—Amount Receivable	$27,469 67	
Freight Cars Interchanged—Amount Payable	5,374 33	
Freight Cars Interchanged—Credit Balance		$22,095 34
Rent Paid for Locomotives		594 13
Equipment Rents—Credit Balance		$21,441 21

(Here follows side folio page 723)

[fol. 723] Annual Charge to Provide for Amortizati

Account—	Investment Dec. 31, 1924	Rate of Deprec.	Depreciation Accrued Dec. 31, 1924
1. Engineering	$2,105 84		$215 55
2. Land for Transportation Purposes	6,833 44		2,183 59
3. Grading	25,066 71		2,637 88
6. Bridges, Trestles and Culverts	1,358 93		54 38
8. Ties	16,777 55		1,934 66
9. Rails	32,663 18		3,696 50
10. Other Track Material	6,141 33		608 17
11. Ballast	6,567 31		
12. Track Laying and Surfacing	16,648 65		2,181 71
13. Right-of-Way Fences	661 91		85 77
15. Crossings and Signs	1,061 08		
16. Stations and Office Buildings	4,715 30	25%	81 61
17. Roadway Buildings	505 62		
26. Tel. and Tel. Lines	240 65		
37. Roadway Machines	1,070 00		
43. Other Expenditures—Road	12 70		
44. Shop Machinery	4,217 07	10%	735 27
Total Road Accounts	$126,647 27		$14,415 09

t ment 1924	Salvage	Rate	Net Investment Less Salv	Annual Amortization of Investment 21-Yr Period	Amortization of Investment Monthly Adj
80 29			$1 880 29	89 01	$7 50
49 85	$1 708 30	25%	2 941 49	140 07	11 67
28 83			22 128 83	1 068 04	89 00
04 55	67 95	5%	1 236 60	58 89	4 91
42 89	838 88	5%	14 004 01	666 86	55 57
66 68	3 286 32	10%	25 780 36	1 223 83	101 99
33 16	614 13	10%	4 919 03	234 24	19 52
67 31			6 567 31	312 73	26 06
96 94			14 896 94	688 90	57 41
76 14	33 10	5%	543 04	25 86	2 16
61 08	53 05	5%	1 008 03	48 00	4 00
33 69	471 53	10%	4 162 16	198 20	16 52
65 62	25 28	5%	480 34	22 88	1 91
40 65	12 03	5%	228 62	10 89	91
70 00	107 00	10%	963 00	45 86	3 82
12 70			12 70	60	05
81 80	421 71	10%	3 960 09	145 72	12 14
32 18	$7 619 34		$104 612 84	$4 981 58	$4 15 14

[fol. 724] Statement showing the return on investment in road and equipment to which the Brimstone Railroad & Canal Company is entitled at the rate of 5¾ per cent per annum on basis of the cost of reproduction new as of December 31, 1923, plus material and supplies and working capital and going concern value as of that date

Cost of reproduction new as of December 31, 1923, plus materials and supplies and working capital and going concern value as of that date, as per Exhibit No. —	$663,576 00
Return on Investment at 5¾ per cent per annum	$38,155 62

[fol. 725] Statement showing the return on investment in road and equipment to which the Brimstone Railroad & Canal Company is entitled at the rate of 5¾ per cent per annum on basis of the cost of reproduction new, less depreciation, as of December 31, 1923, plus materials and supplies and working capital and going concern value as of that date

Cost of reproduction new, less depreciation as of December 31, 1923, plus materials and supplies and working capital and going concern value as of that date, as per Exhibit No. —	$533,615 00
Return on Investment at 5¾ per cent per annum	$30,682 86

[fol. 726] Docket No. 12969—Divisions Received by Brimstone Railroad & Canal Company

Part II

[fol. 727] Summary of adjusted expenses of the Brimstone Railroad & Canal Company together with amortization fund and interest on investment, representing the reasonable and necessary cost of operation in 1923, including both common carrier service and intraplant switching

Operating Expenses	$194,353 44
Taxes	13,821 61
Joint Facility Rents	3,289 34
Equipment Rents—Credit Balance	21,441 21
Total Operating Expenses, Taxes, Joint Facility and Equipment Rents	$190,023 18
Amortization of Road Accounts	4,981 58
Interest on Investment Based on Cost of Reproduction New as of December 31, 1923	38,155 62
Total Cost of Operation, Including Intraplant Switching	$233,160 38

If interest on Investment is based on cost of reproduction new, less depreciation, as of December 31, 1923, the above figures would be revised as follows:

Total Operating Expenses, Taxes, Joint Facility and Equipment Rents	$190,023 18
Amortization of Road Accounts	4,981 58
Interest on Investment based on cost of reproduction new, less depreciation, as of December 31, 1923	30,682 86
Total Cost of Operation, Including Intraplant Switching	$225,687 62

The reasonable and necessary cost of operation in 1923 as above determined includes intraplant switching for the Union Sulphur Company which must now be deducted in order to ascertain the cost of common carrier service. The methods used in making this deduction and the results obtained are set out in Part II of this exhibit.

[fol. 728] Exclusion of Intraplant Switching From Necessary Cost of Operation in 1923 for Purpose of Determining Cost of Common Carrier Service

On January 1, 1923, the Brimstone Railroad & Canal Company took over the performance of intraplant switching for the Union Sulphur Company in connection with the loading of sulphur, which prior to that time that company had performed for itself with its own locomotives: It is necessary, therefore, to deliver from the total cost of operation in 1923, as hereinbefore determined in Part I of this exhibit, the proportion chargeable to intraplant switching, in order to arrive at the reasonable and necessary cost of common carrier service. The detail records of the work performed by the Brimstone Railroad & Canal Company's locomotives during the test, May 21 to May 27, 1924, inclusive, in conjunction with other data, afford the basis for making this deduction. The formula for the segregation of intraplant switching costs, the factors used in making this segregation and the results obtained will be found in the following pages:

[fol. 729] Formula for Segregating the Cost of Intraplant Switching from the Total Cost of Operation in 1923, as Heretofore Determined in Part I of This Exhibit

The Brimstone Railroad & Canal Company's locomotive equipment in service at the close of 1923, classified according to class of service performed, is shown in the following table:

Locomotive No.	Type	Tractive power (pounds)	Weight (pounds)
	Road Locomotives		
6	0-6-0 With Tender	26,000	126,000
10	0-6-0 With Tender	35,100	149,000
	Yard Locomotives		
9	0-4-0 With Saddle Tank	15,910	68,000
11	0-4-2 With Saddle Tank	14,200	68,000
12	0-4-2 With Saddle Tank	14,730	68,000

The class of service performed by the road locomotives consists of road haul, train switching, and weighing cars.

The class of service performed by the yard locomotives consists of yard switching, including intraplant switching for the Union Sulphur Company in connection with the loading of sulphur.

During the seven-day test, May 21 to May 27, 1924, inclusive, road locomotive No. 10 and yard locomotive No. 9 were in service. The intraplant switching for the Union Sulphur Company in connection with the loading of sulphur, is confined entirely to Zone 1, which is the yard zone embracing the tracks, facilities and plant of that company, and is performed by the yard locomotive which operates within that zone. The detail record kept of the switching operations of the yard locomotive during the test period, in conjunction with a similar record of the work performed by the road locomotive, therefore affords a reasonable and practical basis for arriving at the proportion of the 1923 cost of operation which was chargeable to intraplant switching.

The expenses, taxes, joint facility and equipment rents referred to in the following formula, are those for the year 1923 as previously adjusted in Part I of this exhibit.

[fol. 730] Formula

Maintenance of Way and Structures Expenses:

No portion of maintenance of way and structures accounts is considered as chargeable to intraplant switching. The only account which could be involved is No. 1208, "Maintaining Joint Tracks, Yards and Other Facilities." However, on January 1, 1923, the Brimstone Company entered into a contract with the Sulphur Company for the use of certain tracks and it is on these tracks that the charges under Account 1208 apply.

Article 1 of this contract provides:

"——The Union Company has given and granted and by these presents does give and grant unto The Brimstone Company the right, during the continuance of the term hereinafter specified, to use, in common with The Union Company, that portion of The Union Company's tracks which on the map attached hereto and made a part hereof, are colored in blue and which extend from the point marked A to T to G and H and on to C, and also from the point T to point U.

Article 6 of this contract provides:

"The Brimstone Company agrees to keep in repairs and maintain the tracks hereby leased at its own expense. It is understood that this agreement shall obligate The Brimstone Company to keep said tracks in good operating condition, the repair and maintenance thereof to include the replacing of ties on rails and appurtenances whereon necessary."

By specific contract provisions the Brimstone Company agrees to maintain the particular tracks on which charges under account 1208 were incurred for the privilege of using said tracks in its common carrier service. The entire expense is therefore chargeable to operating expenses for the year 1923 and no part chargeable to intraplant switching.

Maintenance of Equipment Expenses:

The maintenance of equipment expenses involved in the cost of intraplant switching are: Account 1224, "Locomotive repairs;" account 1225, "Locomotive depreciation and retirements;" and a proportion of the following accounts: Account 1221, "Superintendence;" account 1222, "Repairs of machinery and other apparatus;" and account 1223, "Depreciation of machinery and other apparatus;" which proportion should be based on the ratio of the total of accounts 1224 and 1225, to the total of all maintenance of equipment accounts, except accounts 1221, 1222, and 1223.

Account 1224. Locomotive repairs should first be divided between yard locomotives and road locomotives, based upon actual repairs made to each class of locomotives in 1923, including a prorata share of the miscellaneous charges to locomotive repairs not allocated to any of the locomotives. Then the amount of repairs to yard locomotives so ascertained, after deducting extraordinary repairs chargeable to investments should be apportioned to intraplant switching in the proportion that the tractive power-hours of yard locomotive No. 9 while engaged in intraplant switching in Zone No. 1, bear to the total tractive power-hours of this [fol. 731] locomotive while engaged in all classes of service in all zones during the test period.

Account 1225: Charges to depreciation and retirements of yard locomotives, less any credits, should be apportioned to intraplant switching in the proportion that the tractive

power-hours of yard locomotive No. 9 while engaged in intraplant switching in Zone No. 1, bear to the total tractive power-hours of this locomotive while engaged in all classes of service in all zones during the test period.

The proportion of accounts 1221, 1222 and 1223, based on the ratio of the total of accounts 1224 and 1925 to the total of all maintenance of equipment accounts, except accounts 1221, 1222 and 1223, should be apportioned to intraplant switching in accordance with the intraplant switching proportion found by combinning accounts 1224 and 1225.

Traffic Expenses:

No portion of traffic expenses is considered to be chargeable to intraplant switching.

Transportation—Rail Line Expenses:

The transportation expenses involved in the cost of intraplant switching are: Account 1270, "Train enginemen and motormen;" account 1271, "Fuel for train locomotives;" account 1273, "Other train locomotive supplies and expenses;" account 1274, "Trainmen;" and a proportion of the following accounts: Account 1261, "Superintendence and dispatching;" account 1264, "Other yard employees;" and account 1279, "Other rail transportation expenses;" which proportion should be based on the ratio of the total of accounts 1270, 1271, 1273, and 1274, to the total of all transportion—rail line accounts, except accounts 1161, 1264, and 1279.

These expenses should be apportioned to intraplant switching on the following basis:

Account 1270: Apportion wages of train engine men and motormen first between classes of service as distinguished by the work performed by road locomotive No. 10 in road haul and general service, and by yard locomotive No. 9 in yard switching, based on the wages actually paid to the enginemen of the respective locomotives during the test period. Then divide the amount so apportioned to the class of service (yard switching) performed by yard locomotive No. 9, between carrier service and intraplant switching on the basis of the time spent in switching for each service during the test period.

Account 1271: Apportion the fuel expenses first between classes of service, as distinguished by the work performed by road locomotive No. 10, in road haul and general service, and by yard locomotive No. 9 in yard switching, based upon the proportions of fuel consumed by each of these locomotives during the test period. Then divide the amount so apportioned to the class of service (yard switching) performed by yard locomotive No. 9, between carrier service and intraplant switching according to the tractive power-hours in each service during the test period.

[fol. 732] Account 1273: Other train locomotive supplies and expenses were subdivided in 1923 as follows:

(a) Water for Train Locomotives		$1,000 00
(b) Other Supplies for Train Locomotives:		
Labor Drying Sand	$408 00	
All Other Miscellaneous Supplies	193 06	
		601 06
(c) Enginehouse Expenses—Train:		
Rental of Enginehouse	1,200 00	
Wages Paid Hostlers	1,770 59	
Other Enginehouse Expenses	362 52	
		3,333 11
		$4,934 17
Total Other Train Locomotive Supplies and Expenses		$4,934 17

Apportion subdivisions (a) and (b) of account 1273 to intraplant switching in accordance with the intraplant switching portion found for account 1271, "Fuel for Train Locomotives."

Apportion subdivision (c) of account 1273 first between classes of service performed by road locomotive No. 10 and yard locomotive No. 9. Then divide the amount so apportioned to the class of service performed by yard locomotive No. 9 between carrier service and intraplant switch-

ing in accordance with the time of this locomotive spent in each service during the test period.

Account 1274: Apportion the wages of trainmen first between classes of service performed by road locomotive No. 10 and yard locomotive No. 9, on the basis of the actual wages paid to such employees used in connection with the operation of each of these locomotives, respectively, during the test period. Then divide the amount so apportioned to the class of service performed by yard locomotive No. 9, between carrier service and intraplant switching on the basis of the time of this locomotive spent in each service during the test period.

Accounts 1261, 1264 and 1279: First ascertain the proportions of these accounts which are chargeable to locomotive operation, on the basis heretofore provided, that is, the ratio of the total of accounts 1270, 1271 and 1274, to the total of all transportation rail line accounts, except accounts 1261, 1264 and 1279. Then apportion these amounts to intraplant switching in accordance with the proportion found intraplant switching by combining 1270, 1271, 1273 and 1274.

[fol. 733] General Expenses:

Apportion general expenses to intraplant switching on the basis of the intraplant switching proportion found by combining all maintenance of way and structures, maintenance of equipment, traffic, and transportation-rail line accounts.

Taxes:

The only taxes involved in intraplant switching are those attaching to the class of locomotives used in such service. In 1923 the taxes paid by the Brimstone Railroad & Canal Company on equipment amount to $8,566.73, which was equivalent to 2.1325 cents per dollar of investment in equipment.

The locomotive equipment of the carrier used in yard switching consists of three small locomotives purchased second-hand from the Union Sulphur Company in 1923 at a total cost of $12,000.00. Two of these locomotives were rehabilitated in 1923 at an approximate cost of $5,000.00,

which amount in the adjustment of the 1923 expenses was deducted form expenses as being properly chargeable to investment under the accounting regulations. The total investment in yard switching locomotives, used in intraplant switching, was therefore approximately $17,000,000 at the end of 1923. Estimated taxes thereon at 2.1325 cents per dollar of investment amount to $362.52.

Taxes, as estimated above, should be apportioned to intraplant switching in the proportion that the time of yard locomotive No. 9 spent in intraplant switching during the test period, bears to the total time of this locomotive spent in all services during the test period.

Joint Facility Rents:

By contract arrangement dated January 1, 1923, between the Brimstone Company and the Union Sulphur Company, the former Company leased from the latter Company certain tracks more fully described in paragraph quoted under the heading of Maintenance of Way and Structures in this exhibit. Article 4 of said contract provides that the Brimstone Company shall pay an annual rental of $3,185.98 for the privilege of using the tracks in question in common with the Sulphur Company. This annual rental is for permission to the Brimstone Company to conduct its common carrier service over the tracks involved. No portion of this charge is chargeable to intraplant switching.

[fol. 734] Interest on Investment:

The approximate investment in yard switching locomotives, used in intraplant switching service, was approximately $17,000.00, at the close of 1923, as previously shown in connection with taxes.

Interest on investment in yard switching locomotives at 5.75 per cent, per annum, amounting to $977.50, should be apportioned to intraplant switching in the proportion that the time of yard locomotive No. 9 during the test period spent in intraplant switching bears to the total time of this locomotive spent in all services during the test period.

Segregation of cost of intraplant switching from total cost of operation in 1923, as heretofore determined in Part 1 of this exhibit, showing application of formula therefor, factors used, and results obtained.

Factors Derived from Test Period Data:

(1) Locomotive Numbers and Tractive Power:

Yard Locomotive: No. 9—Tractive Power: 15,910 Pounds.
Road Locomotive: No. 10—Tractive Power: 35,100 Pounds.

(2) Character of Service Performed by Locomotives:

By Yard Locomotive No. 9: Yard Switching, Including Intraplant Switching.
By Road Locomotive No. 10: Road Haul, Train Switching, Weighing Cars.

(3) Time of Locomotives in Each Zone During Test Period:

Time of Locomotives in Each Zone During Test Period—Shown in Minutes

Locomotive No.	Zone 1, yard zone	Zone 2, S. P. connection	Zone 3, weighing zone	Zone 4, K. C. S. zone	Zone 5, K. C. S. connection	All zones
9	3,478		32	13		3,523
10	991	465	848	183	530	3,017
Total	4,469	465	880	196	530	6,540

[fol. 735] (4) Time of Locomotives During Test Period Divided Between Carrier Service and Intraplant Switching:

Time of Locomotive in Each Zone During Test Period—Shown in Minutes

	Zone 1									
		Carrier service			Carrier Service—transportation					All zones, all services
Locomotive No.	Intraplant switching	Transportation	Miscellaneous carrier	Total time, zone 1	Zone 2	Zone 3	Zone 4	Zone 5		
9	1,994	1,413	71	3,478	...	32	13	...		3,523
10	.....	991	..	991	465	848	183	530		3,017
Total	1,994	2,404	71	4,469	465	880	196	530		6,540

(5) Tractive Power-Hours of Yard Locomotive No. 9 While Engaged in Intraplant Switching in Zone 1 (Yard Zone):

Time in intraplant switching: 1,994 minutes—33.23 hours.
Tractive power-hours: 33.23 hours x 15,910 pounds—528,689 T. P. hours.

(6) Tractive Power-Hours of Both Yard Locomotive No. 9 and Road Locomotive No. 10 in all Services in Zone No. 1 (Yard Zone):

Yard locomotive No. 9, time in Zone No. 1: 3,478 minutes—57.97 hours.
Road locomotive No. 10, time in Zone No. 1: 991 minutes—16.52 hours.

Tractive power hours locomotive No. 9: 57.97 Hrs. x 15,910 Lbs.	922,303 T. P. Hrs.
Tractive power-hours locomotive No. 10: 16.52 Hrs. x 35,100 Lbs.	579,852 T. P. Hrs.
Tractive power-hours both locomotives, in all services, in Zone No. 1	1,502,155 T. P. Hrs.

(7) Tractive Power-Hours of Both Yard Locomotive No. 9 and Road Locomotive No. 10 in all Services in all Zones:
Yard locomotive No. 9, time in all zones: 3,523 minutes—58.72 hours.
Road locomotive No. 10, time in all zones: 3,017 minutes—50.28 hours.

Tractive power-hours locomotive No. 9 all zones: 58.72 hours x 15,910 pounds	934,235 T. P. Hrs.
Tractive power-hours locomotive No. 10 all zone: 50.28 hours x 35,100 pounds	1,764,828 T. P. Hrs.
Total tractive power-hours of both locomotives in all services in all zones	2,699,063 T. P. Hrs.

(8) Ratio of Tractive Power-Hours of Yard Locomotive No. 9 in Intraplant Switching in Zone No. 1 to Total Tractive Power-Hours of Both Yard Locomotive No. 9 and Road Locomotive No. 10 in All Services in Zone No. 1:

Item (5) divided by item (6)—35.20 per cent.

[fol. 736] (9) Ratio of Tractive Power-Hours of Yard Locomotive No. 9 in Intr-plant Switching in Zone No. 1 to

Total Tractive Power-Hours of Both Yard Locomotive No. 9 and Road Locomotive No. 10 in All Services in All Zones:

Item (5) divided by item (7)—19.59 per cent.

Segregation of cost of intraplant switching from total cost of operation in 1923 as hereto determined in Part 1 of this exhibit.

Maintenance of Equipment Expenses

Account 1224, Locomotive Repairs	$3,974 26

Locomotive Repairs Allocated to Classes of Locomotives

Road Locomotives		Yard Locomotives	
No. 6	$1,200 11	No. 9	$2,580 78
No. 10	1,046 22	No. 11	848 66
		No. 12	2,560 14
	$2,246 33		$5,989 58

Miscellaneous charges to locomotive repairs not allocated to any locomotives	$738 35
Miscellaneous charges apportioned to classes of locomotives on the basis of assigned charges:	
Road Locomotives, $738.35 x 27.28%	$201 42
Yard Locomotives, $738.35 x 72.72%	536 93
100.00%	$738 35

[fol. 737] Allocated and Apportioned Charges to Yard Locomotives

Allocated Charges	$5,989 58
Apportioned Charges	536 93
Total	$6,526 51
Deduct Extraordinary Repairs Chargeable to Investment	5,000 00
Amount to be apportioned to carried service and intraplant switching	$1,526 51

Above Amount Apportioned to Intraplant Switching

Ratio tractive power-hours yard locomotive No. 9 in intraplant switching in Zone No. 1 to total tractive powers-hours of yard locomotive No. 9 in all services in all zones during test period	56 60%
$1,526.51 x 56.60%	$864 00
Account 1224 apportioned to intraplant switching	$864 00
Account 1225, "Locomotive Depreciation and Retirements"	6,728 89

Depreciation Yard Locomotives

No. 9	$374 94
No. 11	262 53
No. 12	262 53
	$900 00

Retirement Yard Locomotives

No. 4, Credit	$1,712 19
Total Credit	$812 19
Ratio of tractive power-hours of yard locomotive No. 9 in intraplant switching Zone No. 1, to total tractive power-hour of yard locomotive No. 9 in all services in all zones during test period	56 60%
Depreciation and retirements of yard locomotives apportioned to intraplant switching: $812.19 (Cr.) x 56.60% (Credit)	$459 70
Account 1225 apportioned to intraplant switching, Cr.	$459 70
Ratio of total of accounts 1224 and 1225 to total of accounts 1224 to 1235 inclusive	14 42%
Account 1221	$1,813 45
Account 1222	84 35
Account 1223	313 59
	$2,211 39
Account 1221, Account 1222, Account 1223 Proportion to be apportioned $2,211.39 x 14.42%	$318 88

[fol. 738] **Intraplant Proportion of Accounts 1224 and 1225 Combined**

	Total		Intraplant switching proportion	Per cent intraplant switching
Account 1224	$3,974 26		$864 60	
Account 1225	6,728 89	Cr.	459 70	
	$10,703 15		$404 30	3 78%

Accounts 1221, 1222, and 1223, apportioned to intraplant switching:

$318.88 x 3.78% — $12 05

Traffic Expenses

No proportion of traffic expenses is considered to be chargeable to intraplant switching.

Transportation—Rail Line Expenses

Account 1270 — $6,255 64

Engineer's wages during test period:

Yard Locomotive No. 9:				
Engineer—56 hours @ $0.621	$35 28			
Engineer—5 hours @ .945	4 73			
		$40 01		37 20%
Road Locomotive No. 10:				
Engineer—48 hours @ $0.75	$36 00			
Engineer—3 hours @ $1.125	3 38			
		$39 38		
Fireman—44 hours @ .54	$23 76			
Fireman—4 hours @ .63	2 52			
Fireman—2 hours @ .81	1 62			
		$27 90	$67 28	62 71%
Total engineman's wages during test period			$107 29	100 00%

Account 1270 Apportioned to Classes of Service

Yard switching service:

Apportionment based on proportion of total enginemen's wages during test period paid to enginemen of yard locomotive No. 9—$6,255.64 x 37.29%	$2,332 73

Road haul and general service:

Apportionment based on proportion of total enginemen's wages during test period paid to enginemen of road locomotive No. 10—$6,255.64 x 62.71%	$3,922 91
Total of Account 1270	$6,255 64

[fol. 739] Apportionment of Yard Switching Service to Carrier Service and Intraplant Switching

Proportion of Account 1270 apportioned to yard switching.... $2,332.73

Time of yard locomotive No. 9 during test period:

Time spent in intraplant switching	1904 minutes	56.09%
Time spent in carrier service	1529 minutes	43.40%
Total time of yard locomotive No. 9	3523 minutes	100.00%

Account 1270 apportioned to intraplant switching:
$2,332.73 x 56.09% $1,329.33
Account 1271 (Fuel) $16,003.00

Fuel oil consumed during test period:

By yard locomotive No. 9 in yard switching	41,357 barrels	30.74%
By road locomotive No. 10 in road haul and general services	93,190 barrels	69.26%
	134,547 barrels	100.00%

Fuel oil consumed during test period:		
Account 1271 apportioned to yard switching service: $16,603 00 x 30 74%		$5,103 76
Ratio of tractive power-hours of yard locomotive No. 9 in intraplant switching to total tractive power hours of yard locomotive No. 9 in all services during test period	56 60%	
Account 1271 apportioned to intraplant switching: $5,103.76 x 56.60%		$2,888 73
Account 1273, "Other train locomotive supplies and expenses"		4,934 17
(a) Water for train locomotives	$1,000.00	
(b) Other supplies for train locomotives	601 06	
(c) Enginehouse expenses—Train	3,333 11	
Total Account 1273	$4,934 17	
(a) Water apportioned to intraplant switching on the basis of intraplant switching proportion of Account 1271, $1,000.00 x 17.40%		$ 174 00
(b) Other supplies apportioned to intraplant switching on the basis of intraplant switching proportion of Account 1271, $601.06 x 17.40%		104 58
(c) Enginehouse expenses — Train apportioned first equally between yard switching service and road haul and general service:		
Yard switching service	$1,666 56	
Road haul and general service	$1,666 55	

[fol. 740] Yard switching proportion above apportioned to intraplant switching on the basis of the proportion of the total time of yard locomotive No. 9 during the test period spent in intraplant switching: $1,666.56 x 56.60% — $943 27

Account 1273—Total amount apportioned to intraplant switching. — $1,221 85

Account 1274—"Trainmen" — $8,119 53

(a) Apportioned first to classes of service, on the basis of the actual wages paid to trainmen employed in connection with the operation of yard locomotive No. 9 and road locomotive No. 10, respectively, during the test period.

Trainmen's wages during test period:

Yard locomotive No. 9:

Switchman	56 hours @	$0.54	$30 24	
Switchman	5 hours @	0.81	4.05	
			$34.29	23.25%

Road locomotive No. 10:

Conductor	48 hours @	$0.75	$36.00	
Conductor	2 hours @	1.125	2.25	
Switchman	48 hours @	0.75	36.00	
Switchman	2 hours @	1.125	2.25	
Switchman	48 hours @	0.72	34.56	
Switchman	2 hours @	1.08	2.16	
			$113.22	76.75%
			$147.51	100.00%

Yard switching proportion—$8,119.53 x 23.25% — $1,887 79

Road haul and general service proportion—$8,119.53 x 76.75% — 6,231 74

Total Account 1274 — $8,119 53

(b) Yard switch proportion of Account 1274 apportioned to intraplant switching on the basis of the proportion of the total time of yard locomotive No. 9 during the test period spent in intraplant switching—$1,887.79 x 56.60% — $1,068 49

Account 1274—"Trainmen," apportioned to intraplant switching		$1,068 49
Account 1261—"Superintendence and dispatching"	$333 52	
Account 1264—"Other yard employees"	1,200 00	
Account 1279—"Other rail transportation expenses"	927 81	
Total of Accounts 1261, 1264 and 1279		$2,461 35

[fol. 741] (a) Proportion of above accounts chargeable to locomotive operation, based on the ratio of the total of accounts 1270, 1271, 1273 and 1274, to the total of all Transportation—Rail Line accounts, except accounts 1261, 1264 and 1279 .. .. .. 84 21%

$2,461.34 x 84.21% $2,072 69

(b) Intraplant Switching Proportion of Accounts 1270, 1271, 1273 and 1274

Account No.	Total of account	Intraplant switching proportion	Per cent intraplant switching
1270	$6,255 64	$1,320 33	
1271	16,603 00	2,888 73	..
1273 ..	4,934 17	1,221 85	
1274 ..	8,119 53	1,068 49	..
Total ..	$35,912 34	$6,499 40	18 10%

Accounts 1261, 1264 and 1279—Proportion Chargeable to Locomotive Operation, apportioned to intraplant switching

Proportion of above accounts chargeable to locomotive operation based on (a) $2,072 69

Above proportion chargeable to locomotive operation apportioned to intraplant switching, based on (b)—$2,072.69 x 18.10% $375 16

[fol. 742] Summary of Transportation—Rail Line Accounts Apportioned to Intraplant Switching

Account No.	Total of account	Amount apportioned to intraplant switching
1261, 1264 and 1279	$2,461 34	$375 16
1262	6,471 57	
1270	6,255 64	1,320 33
1271	16,603 00	2,888 73
1273	4,934 17	1,221 85
1274	8,119 53	1,068 49
1275	199 16	
1277	3 05	
1278	59 23	
Total	$45,106 69	$6,874 56

General Expenses

General expenses (total)	$20,560 19

Apportionment of general expenses to intraplant switching is based on the intraplant switching proportion found from all maintenance of way and structures, maintenance of equipment, traffic, and Transportation-Rail Line accounts combined.

	Total	Intraplant switching proportion	Per cent intraplant switching
Maintenance of way and structures accounts	$28,629 61		
* * * Maintenance of equipment accounts	79,352 72	$416 35	
Traffic accounts	16,704 56		
Transportation-Rail Line accounts	45,106 69	6,874 56	
Total	$169,793 58	$7,290 91	4 29%

General expenses apportioned to intraplant switching: $24,559.86 x 4.29%, $1,053.62.

[fol. 743] Summary of Operating Expenses Apportioned to Intraplant Switching

	Total	Amount apportioned to intraplant switching
Maintenance of way and structures	$28,629 61	
Maintenance of equipment	79,352 72	$416 35
Traffic	16,704 56	
Transportation-rail line	45,106 69	6,874 56
General	24,559 86	1,053 62
Total operating expenses	$194,353 44	$8,344 53

Taxes Apportioned to Intraplant Switching

Estimated taxes on three small second hand locomotives used in intraplant switching and carrier service yard switching, based on the cost of these locomotives, plus approximate additions and betterments, and a tax rate of 2.1325 cents per dollar of investment in equipment, amounted in 1923 to	$362 52
The proportion of the taxes on these locomotives apportioned to intraplant switching is based on the proportion of the total time of yard locomotive No. 9, during the test period spent in intraplant switching: $362.52 x 56.60%	$205 19

[fol. 744] Interest on Investment Apportioned to Intraplant Switching

Approximate investment in small locomotives used in intraplant switching and carrier service yard switching	$17,000 00
Interest on investment in these locomotives at 5.75 per cent per annum	977 50

Apportionment to intraplant switching of interest on investment in yard switching locomotives is based on the ratio of the time of yards locomotive No. 9 spent in intraplant to the total time of this locomotive spent in all services during the test period. Interest on investment apportioned to intraplant switching:

$977.50 x 56.60% $553 27

Summary of the Cost of Intraplant Switching Performed for the Union Sulphur Company During 1923

Operating expenses	$8,344 53
Taxes	205 19
Interest on investment	553 27
Total	$9,102 99

[fol. 745] Recapitulation

Showing Reasonable and Necessary Cost of Operation in 1923, as Hereinbefore Determined in Part I of this Exhibit, and the Separation of This Cost Between Common Carrier Service and Intraplant Switching, as Made in Part II of This Exhibit

Operating Expenses:	Total amount	Proportion of total amount chargeable to: Common carrier service	Proportion of total amount chargeable to: Intraplant switching
Maintenance of way and structures	$28,629 61	$28,629 61	
Maintenance of equipment	79,352 72	78,936 37	$416 35
Traffic	16,704 56	16,704 56	
Transportation-rail line	45,106 69	38,232 13	6,874 56
General	24,559 86	23,506 24	1,053 62
Total operating expenses	$194,353 44	$186,008 91	$8,344 53
Taxes	13,821 61	13,616 42	205 19
Joint facility rents	3,289 34	3,289 34	
Equipment rents-Credit balance	21,441 21	21,441 21	
Total operating expenses, taxes and rents	$190,023 18	$181,473 46	$8,549 72
Amortization of Road Accounts	4,981 58	4,981 58	
Interest on investment (Reproduction New)	38,155 62	37,602 35	553 27
Total cost of operation including interest on investment	$233,160 38	$224,057 39	$9,102 99
If interest is computed on cost of reproduction new, less depreciation December 31, 1923, the total cost of operation would be	225,687 62	216,584 63	9,102 99

[fol. 746] EXHIBIT No. A-14

Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

[fol. 747] Docket No. 12969—Divisions Received by Brimstone Railroad & Canal Company

Number of loaded cars interchanged by Brimstone Railroad & Canal Company with connecting carriers in different periods. Summary of cost of common carrier operation in 1923, and average cost per loaded car interchanged. Approximate cost of interchange with Southern Pacific and Kansas City Southern connections.

[fol. 748] Loaded Cars Interchanged by Brimstone Railroad & Canal Company with Connecting Carriers During Different Periods

Period	Total loaded cars interchanged with connecting carriers	Interchange with Southern Pacific		Interchange with Kansas City Southern	
		Loaded cars	Per cent of total	Loaded cars	Per cent of total
Calendar year, 1917	24,776	22,210	89 64	2,566	10 36
Calendar year, 1918	23,417	18,270	78 02	5,147	21 98
Calendar year, 1919	10,476	9,629	91 99	838	8 01
Calendar year, 1920	18,785	17,760	94 54	1,025	5 46
Calendar year, 1921	16,483	14,618	88 69	1,865	11 31
Test period, May 26-June 1, 1922	487	447	91 79	40	8 21
Calendar year, 1922	*20,229	*18,547	91 69	*1,682	8 31
Calendar year, 1923	*24,620	*19,927	80 94	*4,693	19 06
Calendar year, 1924	*18,928	*14,361	75 87	*4,567	24 15
4 months ended April 30, 1924	5,742	3,837	66 82	1,905	33 18
Test period, May 21-May 27, 1924	527	368	69 83	159	30 17

*Loaded cars based on actual loads of car load freight, plus computed loads of L. C. L. freight at an assumed average of 5 tons per car. Data for the years 1917, 1918, 1919, 1920 and 1921 were taken from the cost study prepared by the respondent carriers in connection with the test of May 26-June 1, 1922, submitted at a previous hearing in this case.

Average cost per car of all loaded cars interchanged with both connecting carriers in 1923; also the average cost per car based on the just and reasonable operating expenses for the year 1923 as determined herein, but using the average yearly carload movement for the years 1917 to 1923 inclusive; also the average cost per loaded car based on the number of loaded cars handled in 1924

Total number of loaded cars interchanged with connecting carriers in 1923	24,620
Total cost of common carrier service in 1923 as previously determined in Exhibit No. — including operating expenses, taxes, joint facility and equipment rents, amortization fund and interest on investment based on cost of reproduction new December 31, 1923	$224,057 39
[fol. 749] Total cost of common carrier service in 1923 as previously determined in Exhibit No. — including operating expenses, taxes, joint facility and equipment rents, amortization fund and interest on investment based on cost of reproduction new less depreciation December 31, 1923	216,584 63
Average cost per car all loaded cars interchanged with both connections in 1923 using operating costs including interest on investment on basis of cost of reproduction new December 31, 1923	9 1006
Average cost per car of all loaded cars interchanged with both connections in 1923, using operating costs including interest on investment on basis of cost of reproduction new, less depreciation, December 31, 1923	8 7971
Average number of loaded cars interchanged annually with connecting carriers during the years 1917, 1918, 1919, 1920, 1921, 1922 and 1923	19,825
Average cost per loaded car on basis of 1923 operating expenses above shown, including interest on investment on basis of cost of reproduction new December 31, 1923	11 3017

Average cost per loaded car on basis of 1923 operating expenses above shown including interest on investment on basis of reproduction new, less depreciation December 31, 1923	$10 9248
Total number of loaded cars interchanged with connecting carriers in 1924	18,928
Average cost per loaded car on basis of 1923 operating expenses above shown including interest on investment on basis of cost of reproduction new December 31, 1923	11 8373
Average cost per loaded car on basis of 1923 operating expenses above shown including interest on investment on basis of cost of reproduction new, less depreciation December 31, 1923	11 4425

[fol. 750] Average Cost per Loaded Car of the Interchange with Each Connection

Average engine time consumed per loaded car for the interchange with each connection during the test period, including road haul and terminal switching

	Average time per car interchanged minutes
For cars interchanged with Southern Pacific	7 97694
For cars interchanged with Kansas City Southern	9 44428
For cars interchanged with both connections	8 41935

Under the existing division of the traffic between connections, the preceding figures show that the average engine time consumed per car in the interchange with the Kansas City Southern is 18.395 per cent greater than that consumed in the interchange with the Southern Pacific.

On the basis of the average cost per loaded car of $9.1006 heretofore determined for all cars interchanged with both connections during 1923, the average cost per loaded car for the interchange with each connection would be as follows:

	Average cost per car interchanged
For cars interchanged with Southern Pacific	$8 6223
For cars interchanged with Kansas City Southern	10 2083

On the basis of the average cost per loaded car of $8.7971 heretofore determined for all cars interchanged with both connections during the year 1923 (Interest on investment basis of reproduction new, less depreciation) the average cost per loaded car for the interchange with each connection would be as follows:

	Average cost per car interchanged
For cars interchanged with Southern Pacific	$8 3343
For cars interchanged with Kansas City Southern	9 8674

[fol. 751] EXHIBIT A-16 (BELL)

U. S. District Court, Western District of Louisiana. Filed Nov. 19, 1926. W. B. Lee, Clerk

Report on Condition of the Property of the Union Sulphur Company, at Sulphur, La.

By H. W. Bell, Engineer

This short report comprises information obtained from the Louisiana Tax Commission, from previous statements rendered the Department of Conservation by the Union Sulphur Company, by conversation on January 20, 1925, with S. W. Maxwell, secretary, C. R. Liskow, attorney, and J. L. Henning, formerly general manager of the Union Sulphur Company, and by personal observation and calculation.

Total Tonnage

In 1920, W. R. Ingalls, mining engineer, estimated the total amount of Sulphur originally in the deposit to be 10,349,436 tons. The total tonnage estimated by government representatives, presumably about 1917, was about

1,000,000 tons less than the estimate of Ingalls. The writer estimates the original tonnage as about 9,930,000 tons, which falls between the other two estimates. Such a deposit cannot logically be estimated closer than 10,000 tons. The several factors were selected as follows:

(1) Thickness of Sulphur-Bearing Zone. Taken at an average of 100 feet for actual thickness at all points of the dome. This was taken from departmental data and from company officials.

(2) Areal Extent of Deposit as Measured Along Surface of Ground. This is placed at 75 acres and exceeds the department original figure by 13 acres.

(3) Percentage of Sulphur in Sulphur-Bearing Zone. This is Taken as 35% after interviewing Mr. Henning (formerly their manager) and examining a number of cores of the deposit.

(4) Shape of Deposit. Practically a circular dome. The top of sulphur zone is 450 feet below surface and the greatest depth sulphur found on outer edges is 1,300 feet.

Production

The Union Sulphur Company have produced sulphur as follows:

1894	5 tons.
1895	500 "
1896	1,683 "
1897	1,145 "
1898	1,385 "
1899	None.
1900	172 "
1901	294 "
1902	4,814 "
1903	23,702 "
1904	80,142 "
1905	218,950 "
1906	288,560 "
1907	185,772 "
1908	362,896 "
1909	270,725 "
1910	246,510 "

[fol. 752] 1911	204,220 tons.
1912	786,605 "
1913	478,565 "
1914	374,470 "
1915	379,885 "
1916	383,065 "
1917	595,130 "
1918	918,700 "
1919	526,250 "
1920	37,635 "
1921	795,980 "
1922	1,146,860 "
1923	768,315 "
1924	329,230 "
Total	9,412,165 tons.

The production for 1924 was:

1st quarter	117,595 tons.
2nd quarter	108,210 "
3rd quarter	68,405 "
4th quarter	35,020 "
Total	329,230 tons.

The mine was shut down December 21, 1924, and has not been operated since. Based on the estimate of Ingalls the recovery is 90.94%, is 94.79% based on the writer's estimate and is over 100% based on the government estimate. It is no doubt impossible to recover 100% of any substance in liquid form from rock formation, especially when the reservoir is not directly accessible. The average extraction of oil from wells does not exceed 30%. The extraction of over 90% of sulphur in molten form through the wells from a stratum that contains not over 35% sulphur content is a highly efficient operation.

Information Given by Union Sulphur Company

Mr. W. R. Keever, manager, was not present and some questions could not be answered with assurance by Messrs. Maxwell and Liskow. There was less sulphur shipped in 1924 than in 1923. The price remained about the same,

near $11.00 per ton. The cost of production per ton increased greatly in 1924, due to less tonnage being obtainable. The property has gotten to such a state of exhaustion that it did not pay to operate the wells, from the majority of them no more sulphur was obtainable. At least as much effort was put forth to produce sulphur in 1924 as in 1923. The newest wells lost production rapidly and decreased to nothing.

A total of 712 wells were drilled on the property. About 50 of them found no sulphur, bout found the salt, which occurs normally below the sulphur. The outer limits of the sulphur deposit were determined by these wells.

If a sulphur well is shut down it usually becomes useless, as the sulphur solidifies and seals up the lower casing and strainer and circulation is usually impossible of starting again.

[fol. 753] During the last six months of 1924 the cost of production has been above the selling price.

No shut down was made in 1924 until the final on December 21, 1924.

There was *no* January 1, 1925, about 1,100,000 tons of sulphur on the dump.

These statements are accepted as appearing correct and logical.

Observed Facts

Power plants, derricks, well equipment, pipe lines and, in fact, all of the plant except a few boiler houses were being torn down and disconnected. An immense investment had been made in this surface and well equipment.

Conclusions

The Union Sulphur Company has no doubt extracted the sulphur in the deposit at Sulphur, La., to the economical limit. If, for example, the deposit were only 90% recovered and more could be economically recovered, it is hard to see how the company could afford to wreck their plant and organization in order to avoid a comparatively small amount of taxes. At any rate, the intimation is not borne out by the facts.

[fol. 754] EXHIBIT IN EVIDENCE

Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

Amended Return

1920

Brimstone Railroad & Canal Company

Report of the above named company in the matter of the recovery and payment of Excess Railway Operating Income under the provisions of Section 15a of the Interstate Commerce Act for the period of March 1, 1920, to December 31, 1920.

Total Excess Reported, None.

[fol. 755] Amended Return

Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

Brimstone Railroad & Canal Company

Report of the above named company in the matter of the recovery and payment of Excess Railway Operating Income under the provisions of Section 15a of the Interstate Commerce Act for the period of March 1, 1920, to December 31, 1920

Schedule No. 1

Income Account

Railway Operating Revenue:

Freight	$212,256 63	
Demurrage	27 00	
Total Operating Revenue		$212,283 63

565

Railway Operating Expenses:		
Maintenance of Way & Structures	$24,277 20	
Maintenance of Equipment	99,933 56	
Traffic	12,444 61	
Transportation	22,799 49	
General	8,540 84	
Total Operating Expenses		167,995 70
Net Revenue from Railway Operations		$44,287 93
Railway Tax Accruals		16,691 64
Railway Operating Income		27,596 29
Nonoperating Income:		
Hire of Freight Cars	$7,490 31	
Income from Unf. Sec. & Accts	1,201 20	
Miscellaneous Income	3 10	
Total Nonoperating Income		8,694 61
Gross Income		$36,290 90
Deductions from Gross Income		None
Net Income		$36,290 90
Less:		
Income from Unf. Sec. & Accts	$1,201 20	
Miscellaneous Income	3 10	
		1,204 30
Net Income from Railway Operations		$35,086 60

[fol. 756] Amended Return

Brimstone Railroad & Canal Company

Net income for the months of January and February, 1915, 1916 & 1917, and the fiscal years ended June 30, 1915, 1916 & 1917 and the ratio applicable thereto

Net Income for the Period of March 1, 1920, to December 31, 1920

Schedule No. 2

Net Income, year ended June 30, 1915	$6,591 36	
Net Income, year ended June 30, 1916	45,983 09	
Net Income, year ended June 30, 1917	99,886 74	
Total		$152,461 19
Net Income, January & February, 1915	2,959 30	
Net Income, January & February, 1916	7,854 80	
Net Income, January & February, 1917	20,903 83	
Total		31,717 93
Ratio of Net Income for March to December 1915, 1916 and 1917 to total Net Income for fiscal years of 1915, 1916 and 1917		.79 196067
Net Income year ended December 31, 1920	$39,588 17	
Less:		
Income from Unf. Sec. & Accts.	$3 10	
Miscellaneous Income	1,201 20	
	1,204 30	

Net Income from Railway Operations for year ended December 31, 1920	$38,383 87
Less Net Income from Railway Operations for the period of January and February 1920	3,297 27
Net income for the period of Mar. to Dec. 1920 inclusive	$35,086 60

[fol. 757] Amended Return

Brimstone Railroad & Canal Company

Schedule No. 3

79.1966% of 6% of $811,585.00 as submitted in evidence in I. C. C. Docket No. 12969, Exhibit No. 17, per Schedule No. 5 of this report	$38,564 60
Net Railway Operating Income, March 1st to December 31st, 1920	35,086 60
Excess Net Railway Operating Income	None

[fol. 758] Schedule No. 4

I. C. C. No. 12969

Respondent's Exhibit No. 16

Cost of Reproduction New as of June 30, 1918, Based on 1914 Price Level

I Road:

1. Engineering	$3,658 00
2. Land for Transportation Purposes	6,922 00
3. Grading	16,141 00
6. Bridges, Trestles & Culverts	4,502 00
8. Ties	17,733 00
9. Rails	23,887 00
10. Other Track Material	3,808 00
11. Ballast	7,815 00
12. Track Laying & Surfacing	9,721 00
13. Right of Way Fences	48 00

15. Crossings & Signs	1,548 00	
16. Stations & Office Buildings	4,650 00	
17. Roadway Buildings	300 00	
37. Roadway Machines	606 00	
38. Roadway Small Tools	125 00	
43. Other Expenditures	368 00	
Total Road		$102,022 00
II. Equipment:		
51. Steam Locomotives	$32,046 00	
53. Freight Train Cars	124,155 00	
Total Equipment		156,201 00
III. General Expenditures:		
71. to 75 and 77. Other Expenditures	$1,427 00	
76. Interest during Construction	7,102 00	
Total General Expenditures		8,529 00
Grand Total		$266,752 00

Note.—The above does not include—Working Capital, Materials & Supplies and cost of sixteen (16) miles of Canal Right of Way, and nothing has been included for going concern and appreciation.

[fol. 759] Schedule No. 5

I. C. C. No. 12969

Respondent's Exhibit No. 17

Cost of Reproduction New as of December 31, 1920

Cost of Reproduction New, June 30, 1918 (Bureau of Valuation Quantities), Schedule No. 4	$266,752 00
Working Capital, June 30, 1918	31,639 00
Materials & Supplies, June 30, 1918	4,667 00
Cost of 16 miles of Right of Way for Canal	13,239 00

Cost of Reproduction New as of June 30, 1918	$316,297 (0)
Additions & Betterments, June 30, 1918, to Dec. 31, 1920	209,475 (0)
Total as of December 31, 1920, based on 1914 Price Level, except Additions & Betterments, which are at cost	$525,772 (0)
110% of all accounts included in the $266,752.00 except Account No. 2	285,813 (0)
Cost of Reproduction New as of Dec. 31, 1920	$811,585 (0)

[fol. 760] Brimstone Railroad & Canal Company

Oath

State of New York,
County of New York, ss:

C. A. Snider makes oath and says that he is Vice President of the Brimstone Railroad & Canal Company, that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true and correct.

(S.) C. A. Snider.

Subscribed and sworn to before me this — day of August, 1923. (S.) E. R. Dieckman, Notary Public. (Seal.)

[fol. 761] EXHIBIT IN EVIDENCE

Filed Nov. 19, 1926. W. R. Lee, Clerk, U. S. District Court, Western District of Louisiana

1921

Brimstone Railroad & Canal Company

Report of the Above Named Company in the Matter of the Recovery and payment of Excess Railway Operating Income under the provisions of Section 15a of the Interstate Commerce Act for the year ended December 31, 1921.

Total Excess Reported	$11,549 46
One Half paid to I. C. C. by check No. 5028 on May 25, 1922.	$5,774 73

[fol. 762] Brimstone Railroad & Canal Company

Report of the above named Company in the Matter of the Recovery and Payment of Excess Railway Operating Income Under the Provisions of Section 15a of the Interstate Commerce Act for the year ended December 31st, 1921.

Schedule No. 1

Income Account

Railway Operating Revenue:		
Freight	$214,027 53	
Demurrage	319 00	
Total Operating Revenue		$214,346 53
Railway Operating Expenses:		
Maintenance of Way & Structures	$15,668 87	
Maintenance of Equipment	69,363 66	
Traffic	15,426 76	
Transportation	22,089 71	
General	19,980 97	
Total Operating Expenses		142,309 97

Net Revenue from Railway Operations		72,036 56
Railway Tax Accruals		21,303 80
Railway Operating Income		$50,732 76
Nonoperating Income:		
Hire of Freight Cars	$9,511 80	
Income from Unf. Sec. & Accts.	795 37	
Miscellaneous Income	800 00	
Total Nonoperating Income		11,107 17
Gross Income		$61,839 93
Deductions from Gross income		None
Net Income		$61,839 93
Less:		
Income from Unf. Sec. & Accts.	$795 37	
Miscellaneous Income	800 00	
		1,595 37
Net Income from Railway Operations		$60,244 56

[fol. 763] Schedule No. 2

Net Income, year ended December 31, 1921 (Schedule 1)	$60,244 56
Less 6% on Investment of $811,586.00 as submitted in evidence in I. C. C. Docket No. 12969, Exhibit No. 17, per Schedule No. 4 of this report	48,696 10
*Income in excess of 6% of value of Railway Property	$11,549 46

*One half of excess placed in reserve (Reserve Account, I. C. C. Act 1921). This reserve was established May 23, 1922, and the assets in same are held in Capital Investment	$5,774 73
One half or balance paid to Secretary, Interstate Commerce Commission with the filing of this report	5,774 73
Total Excess	$11,549 46

[Fol. 764]

Schedule No. —

I. C. C. No. 12969

Respondent's Exhibit No. 16

Cost of Reproduction New as of June 30, 1918, Based on 1914 Price Level

I. Road:

1. Engineering	$3,658 00	
2. Land for Transportation Purposes	6,922 00	
3. Grading	16,141 00	
6. Bridges, Trestles & Culverts	4,592 00	
8. Ties	17,733 00	
9. Rails	23,887 00	
10. Other Track Material	3,208 00	
11. Ballast	7,415 00	
12. Track Laying & Surfacing	9,721 00	
13. Right of Way Fences	48 00	
15. Crossings & Signs	1,548 00	
16. Station & Office Buildings	4,650 00	
17. Roadway Buildings	300 00	
37. Roadway Machines	606 00	
38. Roadway Small Tools	125 00	
43. Other Expenditures	368 00	
Total Road		$102,022 00

II. Equipment:

51. Steam Locomotives	$32,046 00	
53. Freight Train Cars	124,155 00	
Total Equipment		156,201 00

III. General Expenditures:

71 to 75 and 77. Other Expenditures	$1,427 00	
76. Interest during Construction	7,102 00	
Total General Expenditures		8,529 00
Grand Total		$266,752 00

NOTE.—The above does not include—Working Capital, Materials & Supplies and cost of sixteen (16) miles of Canal Right-of-way, and nothing has been included for going concern and appreciation.

[fol. 765] Schedule No. 4

I. C. C. No. 12969

Respondent's Exhibit No. 17

Cost of Reproduction New as of December 31, 1920

Cost of Reproduction new, June 30, 1918 (Bureau of Valuation Quantities) Schedule No. 3	$266,752 00
Working Capital, June 30, 1918	31,629 00
Materials & Supplies, June 30, 1918	4,967 00
Cost of 16 miles of Right-of-way for Canal	13,239 00
Cost of reproduction new as of June 30, 1918	$316,297 00
Additions & Betterments, June 30, 1918 to Dec. 31, 1920	209,475 00
Total as of December 31, 1920, based on 1914 Price Level, except Additions & Betterments, which are at cost	$525,772 00
110% of all accounts included in the $266,752.00 except Account No. 2	285,813 00
Cost of Reproduction new as of Dec. 31, 1920	$811,585 00

[fol. 766] Brimstone Railroad & Canal Company

Oath

STATE OF NEW YORK,
County of New York, ss:

C. A. Snider makes oath and says that he is Vice-President of the Brimstone Railroad & Canal Company, that he has carefully examined the foregoing report; that he be-

lieves that all statements of fact contained in the said report are true and correct.

(S.) C. A. Snider.

Subscribed and sworn to before me this 25th day of May, 1922. (S.) E. R. Dieckman, Notary Public. (Seal.)

[fol. 767] Exhibit in Evidence

Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

1922

Brimstone Railroad & Canal Company

Report of the above named company in the matter of the recovery and payment of excess railway operating income under the provisions of section 15a of the Interstate Commerce Act for the year ended December 31, 1922

Total Excess Reported	$43,462 80
One half paid to I. C. C. by check No. 5874 on March 18, 1924	$21,731 40

[fol. 768] Brimstone Railroad & Canal Company

Report of the above named company in the matter of the recovery and payment of excess railway operating income under the provisions of section 15a of the Interstate Commerce Act for the year ended December 31st, 1922

Schedule No. 1

Income Account

Railway Operating Revenue:

Freight	$271,269 02	
Demurrage	553 00	
Total Operating Revenue		$271,822 02

Railway Operating Expenses:		
Maintenance of Way & Structures	$30,962 54	
Maintenance of Equipment	64,311 02	
Traffic	17,379 26	
Transportation	26,681 10	
General	23,871 55	
Total Operating Expenses		163,205 47
Net Revenue from Railway Operations		108,616 55
Railway Tax Accruals		25,148 72
Railway Operating Income		$83,467 83
Nonoperating Income:		
Hire of Freight Cars	$18,167 95	
Income from Unf. Sec. & Accts.	752 25	
Total Nonoperating Income		18,920 20
Gross Income		$102,388 03
Deductions from Gross Income:		
Rent for Locomotives	$1,862 77	
Joint Facility Rents	4,951 90	
Total Deductions from Gross Income		6,814 67
Net Income		$95,573 36
Less Income from Unf. Sec. & Accts		752 25
Net income from railway operations		$94,821 11

[fol. 769] Schedule No. 2

Net income, year ended December 31, 1922 (Schedule 1)	$94,821 11
Less 6% on Investment of $855,971.76 as per Schedule 4 of this report	51,358 31
Income in excess of 6% of value of Railway Property	$43,462 80

[fol. 770] Schedule No. —

I. C. C. No. 12969

Respondent's Exhibit No. 16

Cost of Reproduction New as of June 30, 1918, Based on 1914 Price Level

I. Road:

1. Engineering	$3,658 00	
2. Land for Transportation Purposes	6,922 00	
3. Grading	16,141 00	
6. Bridges, Trestles & Culverts	4,592 00	
8. Ties	17,733 00	
9. Rails	23,887 00	
10. Other Track Material	3,908 00	
11. Ballast	7,815 00	
12. Track Laying & Surfacing	9,721 00	
13. Right of Way Fences	48 00	
15. Crossings & Signs	1,548 00	
16. Stations & Office Buildings	4,650 00	
17. Roadway Buildings	300 00	
37. Roadway Machines	600 00	
38. Roadway Small Tools	125 00	
43. Other Expenditures	368 00	
Total Road		$102,022 20

II. Equipment:

51. Steam Locomotives	$32,046 00	
53. Freight Train Cars	124,155 00	
Total Equipment		156,201 00

III. General Expenditures:

71 to 75 and 77. Other Expenditures	$1,427 00	
76. Interest during Construction	7,102 00	
Total General Expenditures		8,529 00
Grand Total		$266,752 00

Note.—The above does not include—Working Capital, Materials & Supplies and cost of sixteen (16) miles of Canal

Right of way, and nothing has been included for going concern and appreciation.

[fol. 771] EXHIBIT IN EVIDENCE

Brimstone Railroad & Canal Company

Report of the above named company in the matter of the recovery and payment of excess railway operating income under the provisions of Section 15a of the Interstate Commerce Act for the year ended December 31, 1923

[fol. 772] EXHIBIT "A"

Return of the Brimstone Railroad and Canal Company for the Year Ended December 31, 1923

Summary of return	As reported by respondent	For use by the Commission
No. 1. Value of the railway property of the reporting carrier held for and used in the service of transportation (Exhibit B)	$663,576 00	
No. 2. Six per cent of the value of the railway property held for and used in the service of transportation, as reported under No. 1	39,814 56	
No. 3. The amount of net railway operating income for the year (Exhibit C)	75,068 30	
Annual charge to provide for amortization of Investment in Road accounts. See Exhibit A-13, Page 13, Docket No. 12969	4,981 58	
No. 4. The amount of net railway operating income for the year in excess of 6% of the value of railway property held for and used in the service of transportation (Excess of No. 3 over No. 2)	30,272 16	
No. 5. One-half of the excess	15,136 08	
No. 6.		

[fol. 773]

EXHIBIT "B"

Value of the Railway Property Held for and Used in the Service of Transportation by the Respondent for the Year Ended December 31, 1923

Brimstone Railroad & Canal Company

Line No	Name	Miles of road	Miles of second or additional main track	Miles of yard track and sidings	Value of railway property as computed by respondent	Investment in road & equipment close of year		
						Account No. 701	Account No. 702	Total
1	Sulphur Mine, La.—Brimstone, La.	.75	None	1.10	.....	.....	.....	.....
2	Sulphur Mine, La.—Lockport Jct., La.	6.64	"	.58	.....	.....	.....	.....
3	Total	7.39	None	1.68	$923,576.00	$527,826.75	None	$527,826.75

NOTE—For value of railway property as computed by respondent see Exhibit A-12 Docket No. 12969—Divisions received by Brimstone Railroad & Canal Company.

[fol. 774] Exhibit "C"

Net Railway Operating Income as Stated in the Accounting Records of the Respondent for the Year Ended December 31, 1923, in Accordance with the Rules Prescribed in the Uniform System of Accounts

Brimstone Railroad & Canal Company

Credits

Line No.	Account		Amount
	Railway Operating Revenues:		
3	Freight		$293,851 36
4	Demurrage		593 30
5	Equipment Rents:		
6	Hire of Freight Cars		22,035 34
7	Total Credits		$316,480 00
8	Debits		
9	Maintenance of Way & Structures:		
10	(1201)	Superintendence	$2,201 72
11	(1202)	Maint. Roadway and Track	17,927 84
12	(1204)	Maint. Ancillary Structures	1,560 87
13	(1205)	Depreciation of Way & Structures	16 33
14	(1207)	Other Way & Structure Expense	665 24
15	(1208)	Maint. Jt. Yds. & Other Fac. Dr	13,772 15
16		Total Maint. of Way & Structures	$36,244 15
17	Maintenance of Equipment:		
18	(1221)	Superintendence	$1,813 45
19	(1222)	Repairs of Machy. & other App	84 35
20	(1223)	Deprec. " " " " "	313 59
21	(1224)	Locomotive Repairs	8,974 26
22	(1225)	Loco. Deprec. & Retirements	1,301 56
23	(1226)	Car Repairs	36,319 13
24	(1227)	Car Deprec. & Retirements	41,174 42
25	(1235)	Other Equipment Expense	3 32
26		Total Maintenance of Equipment	$89,984 08

Line No.		Account	Amount
27		Traffic:	
28	(1251)	Traffic Expenses	16,704 56
29		Transportation Rail Line:	
30	(1261	Superintendence & Dispatching	$333 53
31	(1262)	Station Service	6,471 57
32	(1264)	Other Yard Employees	1,200 00
33	(1270)	Train Enginemen & Motormen	6,255 64
34	(1271)	Fuel for Train Locomotive	16,603 00
35	(1273)	Other Train Loco. Supp. & Expenses	4,934 17
36	(1274)	Trainmen	8,119 53
37	(1275)	Train Supplies & Expenses	139 16
38	(1277)	Loss & Damage	3 05
39	(1278)	Other Casualty Expenses	59 23
40	(1279)	Other Rail Transp. Expenses	927 81
41		Total Transportation Rail Line	$45,106 69
42		General:	
43	(1291)	Administration	$20,742 92
44	(1292)	Insurance General	863 71
45	(1293)	Valuation Expenses	2,408 91
46	(1294)	Other General Expenses	544 32
47		Total General	$24,559 86
48		Total Operating Expenses	$212,599 34
49	Railway Tax Accruals		24,928 89
50	Rent for Locomotives		594 13
51	Joint Facility Rents		3,289 34
52		Total Debits	$241,411 70
53	Net Railway Operating Income		$75,068 30

[fol. 775]

EXHIBIT "D"

New lines for which permission has been granted by the commission to retain all or any part of the earnings for a period of years

Brimstone Railroad & Canal Company

Nothing to report

[fol. 776]

EXHIBIT "E"

Reserve fund established and maintained in accordance with the provisions of paragraph (6) of section 15A of the Interstate Commerce Act

Brimstone Railroad & Canal Company

Line No.	Name of securities and other investments in fund	Date of maturity (if any)	Annual rate of interest (if any)	Securities issued or assumed by reporting carrier		Other securities held in fund		Book value of other invested assets held in fund
				Par value	Book value	Par value	Book value	
1	Cash on deposit in bank	None	None	None	None	None	None	$27,500.15

[fol. 777] Verification

Oath

STATE OF NEW YORK,
County of New York, ss:

C. A. Snider makes oath and says that he is the Vice President and Treasurer of the Brimstone Railroad & Canal Company, that he has carefully examined each and all of the statements contained in the foregoing return; that all of the statements in said return were prepared under his direction from its records and are true and correct to the best of his knowledge and belief.

———, Vice President and Treasurer.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this — day of —, 1925.

—— ——, Notary Public.

[fol. 778] IN UNITED STATES DISTRICT COURT

PRAECIPE OF UNITED STATES FOR TRANSCRIPT OF RECORD—Filed March 17, 1927

Department of Justice

United States Attorney, Western District of Louisiana, Shreveport, Louisiana

PHM-NI. March 17th, 1927.

Honorable W. B. Lee, Clerk, United States District Court, Shreveport, Louisiana.

In Re Brimstone Railroad & Canal Co. vs. United States et al., No. 241, in Equity

DEAR SIR: In lieu of our praecipe, dated the 15th instant, wherein we indicate the whole of the record as the items to be incorporated in the transcript to be filed with the Supreme Court of the United States in the above entitled and numbered suit, we now indicate copies of the following por-

tions of the record for inclusion in the transcript in the form indicated, in connection with the portions listed in "Memorandum of Exhibits to be included in the Transcript" heretofore filed by the Appellant:

1. Answer of the United States.

2. Intervention and answer of the Interstate Commerce Commission.

3. Answer of Louisiana Western Railroad.

4. Twelve (12) sheets consisting of answers (in full) of the Brimstone Company to the question-aire of the Commission.

5. Exhibits (in full) filed in the proceedings before the Commission and numbered 10, 11, 31, 32, 33 and 38.

6. "Statement: Re Exhibits" narrative of exhibits numbered 1 to 39, both inclusive; four unnumbered exhibits and exhibits numbered A-1 to A-14, both inclusive (with the understanding that Nos. 10, 11, 31, 32, 33 and 38 shall be included in full as above indicated.

7. "Statement showing division sheets attached to question-aire" with this modification: eliminate the title and the two paragraphs at top of first page (which paragraphs are designated as "Exhibit E" and "Exhibit F") and in lieu thereof substitute the title and two paragraphs indicated on the enclosed sheet marked A.

On page 7 of the same document, eliminate the third paragraph from the bottom "One sheet—showing effective and cancelled date of division sheets issued by the M. L. & T., and L. W. Rays., in connection with the B. R. R. & C. Co." which is one of the indices mentioned under "E" above (it is marked "Exhibit E" in the I. C. C. record).

8. Narrative form of evidence heretofore filed by the appellant, subject to the following additions, changes and eliminations:

Page 2: Fourth paragraph, third line, transfer the words, [fol. 779] "as a railroad corporation" to the preceding line and immediately following the words "in 1905"; and insert after the figures "$100,000.00" the words "divided into 1,000 shares, par value $100 each," so that the words shall read, "in 1905 as a railroad corporation, with a capital stock of $100,000.00, divided into 1,000 shares, par value $100 each."

Page 14: the short paragraph in the middle should be changed so as to read, "The bridges and structures on the

Brimstone Railroad are constructed to withstand the strain of heavy traffic."

Page 18: the short paragraph in the middle should be changed so as to read, "The Brimstone to all intents and purposes lies wholly without the plant proper of the Union Sulphur Company (R. 99)."

Page 19: the line at the top should read, "of long standing: just simply entered into years ago and allowed to remain that way (R. 119)."

Page 26: eliminate the words "A copy of this was furnished to opposing counsel within ten days. The questionnaire was not filed in evidence before the Commission."

Page 29: middle, the references "(R. 102-108)" should be "(R. 202-208)."

Page 31: third line, after the word "Dividend" insert, "The operations of the Company, the canal project as well as the railroad property, were financed by demand notes originally."

Page 40: eliminate the paragraph of six lines at bottom and in lieu thereof insert the testimony in haec verba beginning with the words, "Q. (By Mr. La Ree) Suppose that the reports of the Brimstone Railroad Company on File" etc., to and including the words, "We take into consideration their earnings at the end of a given period (R. 257-258)."

Page 43: top, second line, after the word "described" insert, "It may possibly cost more, but I do not believe that a capable and experienced operating man could determine just how much more."

Same page: second paragraph, sixth line, eliminate the words, "All of the division sheets were filed in answer to the questionnaire (referred to elsewhere)" and in lieu thereof insert the testimony in haec verba beginning with the words, "Mr. Wood: Mr. Examiner, I am informed that those old division sheets are in the record," etc., to and including the words, "There is no objection to furnishing it, so far as that is concerned."

Page 45: middle, the reference (R. 267) should be "(R. 277)."

Page 71: ninth line, eliminate the word "his" and in lieu thereof insert "It is my"; and on the following line eliminate the word "is" so that the words shall read, "It is my recollection that he agreed with this conclusion."

Page 72: fifth line, substitute a comma for the period following the word "commission" and add the words, "in so far as applicable."

[fol. 780] Page 76: bottom, the words "$300.00 per month" should be $3,000.00 per month."

Page 82: first paragraph, fifth line, after the figures "$19.4297" inserts, "This is based on the time *should* in the cost study, exhibit 30."

Page 87: middle, the figures "90" should be "95" so that the words shall read (95 per cent is loaded at the south end)."

Page 88: middle and end of line, after the word "and" add "still we"; in the *second* line following substitute "could" for "would," so that the words shall read, "and still we pay the Brimstone engine to come up and get the cars when the Union Sulphur Company could shunt them down to the Brimstone."

Page 91: first paragraph, after the figure "677" add "—688."

Page 106: second paragraph, second line, add to the word "common" the prefix "non," so that the words shall read, "should be classed as non-common carrier property."

Page 116: last paragraph, third line, after the word "Railroad" insert the following sentence, "I am not well informed as to the traffic conditions surrounding that railroad."

Page 142: second paragraph, following the word "used" add the following sentence, "The Commission, as I understand it, has never adopted the reproducing cost track new as a basis for the computed return."

Yours very truly, Philip H. Mecom. Philip H. Mecom, United States Attorney.

[File endorsement omitted.]

[fol. 781] In United States District Court

[Title omitted]

Answer of the United States—Filed March 12, 1926

United States of America for answer to the petition filed herein against it says:

I, II, III, IV. Except as shown by the reports of the Interstate Commerce Commission hereinafter referred to, defendant has no knowledge of the matters and things alleged in paragraphs I, II, III and IV, it neither admits nor denies the same, and in so far as they may become material upon the hearing it will require strict proof thereof.

V. Defendant denies the matters and things alleged in paragraph V and each and every part of the same in manner and form as alleged with this exception: defendant admits the matter in controversy exceeds the sum of $3,000.

VI. Defendant has no knowledge of the matters and things alleged in paragraph VI, it neither admits or denies the same, and in so far as they may become material upon the hearing it will require strict proof thereof with these exceptions: defendant admits, (a), the Commission, on August 1, 1921, entered the order referred to and, subject to verification, paragraph VI contains a true copy; (b) the order was served upon petitioner and the carrier defend-[fol. 782] ants to the petition herein.

VII. Except as shown by the report of the Commission styled "Divisions received by Brimstone Railroad & Canal Company," dated April 4, 1922, and reported at 68 Interstate Commerce Commission Reports, pages 375-388 inclusive, and referred to in paragraph VII, this defendant has no knowledge of the matters and things alleged in paragraph VII, it neither admits nor denies the same and in so far as they may become material upon the hearing it will require strict proof thereof with these exceptions: (a) subject to verification, defendant admits that Exhibit B attached to the petition is a true copy of the report and order; (b) defendant denies the right of petitioner to annex Exhibit B to the petition for the limited purpose or specific purpose in the manner and form as alleged.

VIII. Except as shown by the several reports and orders of the Commission herein referred to, defendant has no knowledge of the matters and things alleged in paragraph VIII, it neither admits nor denies the same and in so far as they may become material upon the hearing it will require strict proof thereof.

IX. Defendant admits that the Commission made and entered the report and order on further hearing styled

"Divisions received by Brimstone Railroad & Canal Company," dated March 10, 1924, as reported at 88 Interstate Commerce Commission Reports, pages 62-76 inclusive, and, subject to verification, Exhibit C is a true copy thereof. Defendant refers to the report and order in its entirety for the full contents and true purport thereof and denies the allegations of the petitioner with respect thereto as they are inadequate for that purpose.

X. Except as shown by the reports and orders of the Commission herein referred to, this defendant has no knowledge of the matters and things alleged in paragraph X, it neither admits nor denies the same and in so far as they may become material upon the hearing it will require strict proof thereof with these exceptions: (a) specifically [fol. 785] this defendant denies "that the said divisions of joint rates prescribed by the Commission would not have produced and did not produce sufficient revenue on freight traffic actually handled from and after August 1, 1921, to pay the operating expenses and taxes of the Brimstone Railroad and a fair return on its common carrier property, from and after said date;" (b) defendant admits the Commission made and entered the report "Divisions received by Brimstone Railroad & Canal Company", dated December 14, 1925, and reported at 104 Interstate Commerce Commission Reports, pages 415-436 inclusive.

XI. Defendant admits the Commission made and entered the order dated December 14, 1925; that, subject to verification, paragraph XI contains a true copy thereof; defendant further admits that, subject to verification, Exhibit F attached to and made a part of the petition is a true copy of such report and order.

XII. Except as shown by the several reports and orders of the Commission herein referred to, defendant has no knowledge of the matters and things alleged in paragraph XII, it neither admits nor denies the same and in so far as they may become material upon the hearing it will require strict proof thereof with this exception: (a) defendant admits that Louisiana Western Railroad Company and Kansas City Southern Railway Company are common carriers of passengers and property in interstate and intrastate commerce and that the railroad of each connects with the railroad of petitioner.

XIII, XIV, XV. Except as shown by the reports and orders of the Commission herein referred to, defendant has no knowledge of the matters and things alleged in paragraphs XIII, XIV and XV, it neither admits nor denies the same and in so far as they may become material upon the hearing it will require proof thereof.

XVI. Defendant denies the allegations of paragraph XVI as amended by adding sub paragraph (d) thereto, and [fol. 784] each and every part of the same in manner and form as alleged. Specifically this defendant denies that the owners and findings or any part thereof are without evidence to support them.

XVII. Defendant denies the allegations of paragraph XVII and each and every part of the same in manner and form as alleged.

XVIII. Defendant denies the allegations of paragraph XVIII and each and every part of the same in manner and form as alleged.

XIX. Defendant denies the allegations of paragraph XIX and each and every part of the same in manner and form as alleged.

XX. Defendant alleges that the allegations contained in paragraph XX and each and every part of the same are argumentative and defendant denies the same and each and every part of the same in manner and form as alleged.

XXI-XLV, inclusive. Except as they are shown by the reports and orders of the Commission herein referred to, defendant denies the matters and things alleged in paragraphs XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLIV and XLV, and each and every part of the same in manner and form as alleged. Defendant alleges that the allegations contained in the said paragraphs and each of them are argumentative in that they consist of an argument of the evidence before the Commission and the findings of the Commission thereon to the end that the Court may substitute itself for the Commission and its judgment for the judgment of the Commission in a contro-

versy which by the Constitution and laws of the United States has been committed to the Commission.

XLVI. Defendant denies the matters and things alleged in paragraph XLVI and each and every part of the same in manner and form as alleged.

XLVII. Defendant neither admits nor denies the allegations of paragraph XLVII and if the same become material upon the hearing it will require strict proof thereof. Defendant alleges that the petitioner fails to state by whom, the [fol. 785] times when, and the places where, it is threatened with exorbitant penalties which the United States will seek to recover through suits filed by the Attorney General unless temporary restraining orders and injunctions are granted.

XLVIII, XLIX. Defendant denies the matters and things alleged in paragraphs XLVIII and XLIX and each and every part of the same in manner and form as alleged.

Further answering this defendant alleges that the matters and things set forth in the petition and sought to be put in issue before the court were all before the Interstate Commerce Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act; in its reports in writing with respect thereto, made after full hearing and on due notice to all of the parties, which state its conclusions together with its decision, order or requirement in the premises, the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence adduced by the parties.

This defendant alleges that the facts set forth in the reports of the Commission and each and all of the same are true and correct.

It specifically denies—

(a) Any fact or facts alleged in the petition, or any part of the same, which deny, or which seek to deny, any fact or facts found by the Commission.

(b) Any fact or facts alleged in the petition, or any part of the same, which are inconsistent with any fact or facts found by the Commission.

(c) Any and all inferences of fact from any particular fact or facts alleged in the petition, or any part of the same, which seek to deny, or which are inconsistent with any fact or facts found by the Commission.

(d) Any fact or facts alleged in the petition, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Commission.

[fol. 786] (e) Any fact or facts alleged in the petition, or any part of the same, which attack or which seek to attack the action of the Commission, and to show facts other than what the Commission has found and declared.

(f) Any allegations in the petition, or any part of the same, which allege that facts were found by the Commission in its report which, as shown on the face thereof, were not so found.

(g) Any conclusions of law alleged and insisted upon in the petition, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission.

(h) Each and every allegation in the petition contained not herein specifically admitted or denied.

Wherefore, having fully answered, defendant prays that the petition be dismissed at the cost of the petitioner and for such other and further order as may be appropriate.

Blackburn Esterline, Assistant to the Solicitor General. Philip H. Mecom, United States Attorney.

[fol. 787] *Duly sworn to by Blackburn Esterline; jurat omitted in printing.*

[File endorsement omitted.]

[fol. 788] In United States District Court

[Title omitted]

Intervention of Interstate Commerce Commission—Filed March 13, 1926

To the honorable the judges of said court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Daniel W. Knowlton, Edward M. Reidy.

[File endorsement omitted.]

[fol. 789] In United States District Court

[Title omitted]

Answer of Interstate Commerce Commission—Filed March 13, 1926

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies contained in the petitioner's bill of complaint, as amended, hereinafter referred to as bill of complaint, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

Answering Paragraphs I to V, inclusive, and subdivision I of Paragraph XII of the bill of complaint, the Commission admits for the purposes of this suit that the allegations therein contained are true.

Answering Paragraphs VI to L, inclusive, of the bill of complaint, the Commission admits and alleges that by an order dated August 1, 1921, copy whereof is set forth in Paragraph VI, the Commission instituted a proceeding and

investigation on its own motion for the purpose of deter-
[fol. 790] mining whether the divisions received by the petitioner out of the joint interstate rates and charges established between it and its trunk line connections, the defendants Kansas City Southern Railway Company and Louisiana Western Railroad Company, subsidiary of the Southern Pacific Company, were just, reasonable, and equitable; that the proceeding so instituted was entitled Divisions Received by Brimstone Railroad & Canal Company, and is on the docket of the Commission as No. 12969; that the petitioner, together with said defendants Kansas City Southern Railway Company and Louisiana Western Railroad Company were made parties to said proceeding as respondents, and that the aforesaid order was served upon each of said respondents; that the Texas Gulf Sulphur Company participated in the earlier hearings held in the proceeding, its interest being to prevent the Union Sulphur Company, owner of 1,995 shares of the 2,000 shares of petitioner's capital stock from obtaining an unlawful advantage through its said ownership; that the Louisiana Public Service Commission was also represented by counsel at the earlier hearings held in the proceeding and asked for the recognition of the petitioner as a common carrier entitled to participate in joint rates and receive just, reasonable, and equitable divisions thereof.

The Commission further admits and alleges that it made and entered and served upon all of the respondents in said proceeding the report of April 4, 1922, certified copy whereof is made a part of the bill of complaint as "Exhibit B," and the report and order of March 10, 1924, certified copies whereof are made a part of the bill of complaint as "Exhibit C" to which said copies the Commission respectfully refers the court for information concerning the find-
ings and requirements of the Commission contained in said
[fol. 791] reports and order; that following the service of the Commission's report and order of March 10, 1924, the petitioner filed application for rehearing and exceptions, certified copies whereof are made a part of the bill of complaint as "Exhibit D" and "Exhibit E," respectively; that pursuant to said application the proceeding was reopened and further hearings held; and that subsequently the Commission made and entered and served upon all the respondents in said proceeding the report and order of December

14, 1925, certified copies whereof are made a part of the bill of complaint as "Exhibit F."

The Commission further alleges that in said proceeding it accorded to the parties the full hearings provided for by section 15 and by other applicable provisions of the Interstate Commerce Act; that at said hearings a large volume of testimony and other evidence bearing upon the matters covered by said orders was submitted to the Commission for consideration on behalf of the parties to said proceeding by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said reports and orders, which included the Commission's decisions, conclusions, orders, and requirements in the premises; that upon the evidence before it and as shown in and by said reports and orders, the Commission made the findings and stated the conclusions upon which said orders are based.

[fol. 792] The Commission further alleges that said findings and conclusions were and are, and that each of them was and is, fully supported and justified by the evidence before the Commission in said proceeding.

The Commission further alleges that in making said reports and orders it considered and weighed carefully, in the light of its own knowledge and experience, all matters to which it is required to give consideration by the terms of section 15 and other provisions of the Interstate Commerce Act, and each fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including all matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said orders were not made or entered by it either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable or unlawful manner.

Further answering Paragraphs VI, XV, XVI, XVII and XVIII, the Commission denies that the joint rates and

charges, the divisions thereof received by the petitioner were found by the Commission to have been unjust, unreasonable, and inequitable, were not established pursuant to its finding or order, and the Commission while not admitting, but on the contrary denying, that the establishment of said joint rates and charges pursuant to its finding or order was a prerequisite to the jurisdiction exercised by it and the validity of the findings, conclusions, and orders, or any of them, made by it in the premises, nevertheless, alleges that said joint rates and charges were established [fol. 793] pursuant to the findings of the Commission in that said joint rates and charges which were in effect at the commencement of the Commission proceeding and until July 1, 1922, were authorized by the Commission in a proceeding duly held before it entitled Ex Parte 74, Increased Rates, 1920, reported in 58 I. C. C. 220, and said joint rates and charges which were in effect after July 1, 1922, and throughout the remainder of said proceeding were authorized by the Commission in a proceeding duly held by it entitled Reduced Rates, 1922, reported in 68 I. C. C. 676, and in that said joint rates and charges as in effect both prior and subsequent to July 1, 1922, were incorporated in the schedules of rates and charges under which the petitioner conducted its operations, which said schedules were filed with the Commission by the petitioner, or by its connecting railroads and concurred in by the petitioner.

Further answering Paragraphs XIV and XXIX, the Commission admits that if for any year subsequent to the enactment of section 15a of the Interstate Commerce Act the petitioner's net railway operating income has been or should be in excess of six per centum of the value of its railway property held for and used by it in the service of transportation it will, when such facts are established in the manner prescribed by said section 15a, be required to hold one half such excess in a reserve fund and to pay the remaining one half of such excess to the Commission for the purposes provided in said section 15a. The Commission denies, however, that the provisions of said section 15a have operated or will operate as an appropriation by the Government of petitioner's property for public uses. The Commission admits that the petitioner made the payments mentioned in sub-division II of Paragraph XXIX. The

Commission alleges, however, that no hearing in respect of [fol. 794] the questions as to whether any amounts or what amounts were or are due from the petitioner under the provisions of section 15a have ever been held; that the amounts of said payments were arrived at through tentative computation based upon figures submitted by the petitioner in response to orders of the Commission prescribing rules and regulations for the guidance of the petitioner and other carriers in preparing and sending to the Commission reports pertaining to excess net railway operating income; and that the petitioner did not make, or the Commission receive said payments as final payments of the correct amounts, or as final determinations that any amount or amounts were due for the respective periods covered by said payments. The Commission denies that said payments were demanded by it or that they were made pursuant to any findings or final determinations of the Commission as to the amounts due, or that any amounts were due from the petitioner under said section 15a; the Commission denies that said payments constituted reductions of the petitioner's divisions of joint rates or of its revenues, and denies that the repayment or readjustment thereof in conformity with the rights and obligations of the petitioner as finally determined is unprovided for.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in said bill of complaint, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report of April 4, 1922, or in said report and order of March 10, 1924, as modified by said report and order of December 14, 1925, which are hereby referred to and made a part hereof.

[fol. 795] All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by Daniel W. Knowlton, Edward M. Reidy, Counsel. P. J. Farrell, of Counsel.

Duly sworn to by Frank McManamy; jurat omitted in printing.

[File endorsement omitted.]

[fol. 796] In United States District Court

[Title omitted]

Answer of Louisiana Western R. R. Co.—Filed March 8, 1926

The answer of the Louisiana Western Railroad Company, one of the defendants herein, to the bill of complaint and amended bills of complaint herein, with respect shows:

I

For answer to Article I thereof, this defendant on information and belief admits the allegations therein contained.

II

For answer to Article II thereof, this defendant on information and belief admits the allegations therein contained.

III

For answer to Article III thereof, this defendant on information and belief admits the allegations therein contained.

IV

For answer to Article IV thereof, this defendant on information and belief admits the allegations therein contained.

V

For answer to Article V thereof, this defendant admits that the matters in controversy in this suit and the questions involved therein arise under the constitution and laws of the United States, and that the matter in controversy exceeds the sum and value of $3,000.00, exclusive of interest and costs. As to whether complainant has adequate remedy at law, or a right to any remedy, this defendant respectfully refers to its answer to Article X herein.

VI

For answer to Article VI thereof, this defendant admits that the proceedings therein referred to, being proceedings

before the Interstate Commerce Commission, were in fact taken as shown by the records of such Commission.

[fol. 797] VII

For answer to Article VII thereof, this defendant admits that the proceedings therein referred to, being proceedings before the Interstate Commerce Commission, were in fact taken as shown by the records of such Commission.

VIII

For answer to Article VIII thereof, this defendant admits that the proceedings therein referred to, being proceedings before the Interstate Commerce Commission, were in fact taken as shown by the records of such Commission.

IX

For answer to Article IX thereof, this defendant admits that the proceedings therein referred to, being proceedings before the Interstate Commerce Commission, were in fact taken as shown by the records of such Commission.

X

For answer to Article X thereof, this defendant admits those allegations as to the action taken by the Interstate Commerce Commission and the parties thereto in the matter entitled "Divisions Received by the Brimstone Railroad and Canal Company" (being No. 12869 of the Docket of the said Commission, but as to the effect of the divisions prescribed by the said Commission on complainant, this respondent has not sufficient information to answer.

And further answering said Article X (and in order to prevent the necessity of repetition), and for answer to allegations throughout said bill with regard to the matters hereinafter referred to, this defendant says that, as elsewhere herein admitted, it is and was at all of the times hereinafter stated a common carrier by rail, engaged in the transportation of goods and passengers by steam between points in the different states of the United States, and be- [fol. 798] tween points in the United States and points in foreign countries, and as such subject to the Interstate

Commerce Act and amendments thereto, and other acts dealing with such common carriers. As such common carriers the matter of the propriety and fairness of its divisions with other common carriers, and more particularly with the complainant herein, are and have been throughout, subject to the extent provided in said Act, to regulation by the Interstate Commerce Commission, and this defendant had and has no lawful power either to claim or collect from the plaintiff herein any amount other than may be or might have been legally due to it, nor, on the other hand, to waive by any admission either of fact or law, express or implied, by any judicial proceeding, or otherwise, its right and duty to collect whatever amount may be lawfully due it by said complainant. Accordingly, while answering fully in so far as its knowledge extends to all allegations of fact in said complaint contained, this defendant submits that it is not its duty either under the rules pertaining to equity practice or under the law, as above stated, to answer the various allegations or conclusions of law which are to be found in the complaint; its duty and purpose being to submit such questions to the decision of the courts.

Further answering, this defendant says that the traffic referred to in the complaint interchanged between complainant and its two trunk line connections, defendants herein, moved over the line of the complainant, and in so far as this defendant is concerned over its lines and those of its connections, under rates duly published and filed with the Interstate Commerce Commission, and divisions of which the history is as follows so far as relevant to the proceedings herein:

Rates and divisions covering the above traffic were from time to time filed with the Interstate Commerce Commission and went into effect on various of the commodities and between various points at various times prior to Federal control.

[fol. 799] During Federal control by administrative order the divisions as between this defendant and the complainant (which was not under Federal control) were prescribed effective as of April 1, 1919, on the basis that was subsequently attacked and disapproved in the proceeding before the Interstate Commerce Commission referred to in the complaint, being the proceedings initiated August 1, 1921.

The properties of this defendant were at the time of such order under the control of the United States and this defendant had no part as to the fixing of such divisions, nor have said divisions ever been changed except in one or two immaterial points which will be hereinafter mentioned.

This defendant accordingly says that in applying the divisions applied to the rates in question it had every reason to believe, and it believed, that said divisions were just, lawful, reasonable, and proper.

For the reasons above stated this defendant submits that the questions of law as to the proper divisions from the date of effectiveness (if effective) of the order of the Interstate Commerce Commission referred to in the bill of complaint and the amounts, if any, due defendant by complainant under said order are questions of law for the decision of the court, as to which this defendant cannot properly be required to answer.

XI

For answer to Article XI therof, this defendant admits the allegations therein contained.

XII

For answer to Article XII thereof, this defendant refers to its answer to Article X hereinabove, and in so far as not covered thereby admits the allegations of the present article.

XIII

For answer to Article XIII thereof, this defendant refers to its answer to Article X, hereinabove, and in so far as not covered thereby admits the allegations of the present article.

XIV

For answer to Article XIV thereof, this defendant on information and belief admits the allegations of fact therein contained.

[fol. 800] XV

For answer to Article XV of the said complaint, this defendant respectfully shows that it understands the allegations of Article XV of said complaint to contain in sub-

stance an allegation as to the legal effect of the various actions on the part of the Commission as set forth in the other articles of said bill and accordingly to constitute an allegation of law as to which this defendant is not required to answer.

XVI

For answer to Article XVI thereof, this defendant shows that the said Article contains no allegations of fact which this defendant is required to answer.

XVII

For answer to Article XVII thereof, this defendant shows that the said Article contains no allegations of fact which this defendant is required to answer.

XVIII

For answer to Article XVIII thereof, this defendant shows that the said Article contains no allegation*f* of fact which this defendant is required to answer.

XIX

For answer to Article XIX thereof, this defendant shows that the said Article contains no allegations of fact which this defendant is required to answer.

XX

For answer to Article XX thereof, this defendant shows that it has not information sufficient to enable it to answer the allegations of fact therein contained.

XXI

For answer to Article XXI thereof, this defendant admits the allegations of fact therein contained.

XXII

For answer to Article XXII thereof, this defendant has not information sufficient to enable it to answer the allegations of fact therein contained.

[fol. 801]

XXIII

For answer to Article XXIII thereof, this defendant has not information sufficient to enable it to answer the allegations of fact therein contained.

XXIV

For answer to Article XXIV thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XXV

For answer to Article XXV thereof, this defendant has not information sufficient to enable it to answer the allegations of fact therein contained.

XXVI

For answer to Article XXVI thereof, this defendant has not information sufficient to enable it to answer the allegations of fact therein contained.

XXVII

For answer to Article XXVII thereof, this defendant has not information sufficient to enable it to answer the allegations of fact therein contained.

XXVIII

For answer to Article XXVIII thereof, this defendant has not information sufficient to enable it to answer to the allegations of fact therein contained.

XXIX

For answer to Article XXIX thereof, this defendant has not information sufficient to enable it to answer the allegations of fact therein contained.

XXX

For answer to Article XXX thereof, as amended, this defendant on information and belief admits that complain-

ant has practically no local traffic. As to the other allegations of fact therein contained, this defendant has not sufficient information for answer; and as to the allegations of conclusions of law, this defendant refers to its answer to Article X.

[fol. 802]

XXXI

For answer to Article XXXI thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XXXII

For answer to Article XXXII thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XXXIII

For answer to Article XXXIII thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XXXIV

For answer to Article XXXIV thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XXXV

For answer to Article XXXV thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XXXVI

For answer to Article XXXVI thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XXXVII

For answer to Article XXXVII thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XXXVIII

For answer to Article XXXVIII thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XXXIX

For answer to Article XXXIX thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

[fol. 803] XL

For answer to Article XL thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XLI

For answer to Article XLI thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XLII

For answer to Article XLII thereof, this defendant says that it is true that if the order of the Commission referred to in said Article should be enforced the Brimstone Railroad would be compelled to pay to the Louisiana Western Railroad Company and the Kansas City Southern Railway Company a very large sum, and on information and belief this defendant says that it believes the estimate of $400,000 made in said Article is approximately correct.

As to the remainder of said Article this defendant respectfully refers to its answer to Article X and says the remainder of said Article consists of allegations of law only which this defendant submits it is not obliged to answer.

XLIII

For answer to Article XLIII thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XLIV

For answer to Article XLIV thereof, this defendant has not sufficient information to enable it to answer the allegations of fact therein contained.

XLV

For answer to Article XLV thereof, this defendant admits the allegations therein contained.

XLVI

For answer to Article XLVI thereof, this defendant has no knowledge as to the allegations of fact therein contained, and as to the allegations of law, respectfully refers to its answer to Article X of said complaint.

[fol. 804]

XLVII

For answer to Article XLVII thereof, this defendant says that it has no knowledge as to whether any actual threats have been made of the character alleged and in so far as to the rest of said Article, which consists of conclusions of law, this defendant respectfully refers to its answer to Article X of the said complaint.

XLVIII

For answer to Article XLVIII thereof, this defendant says it has not sufficient information for answer as to the effect upon the revenue of the complainant or a fair return on the value of the property of the complainant referred to in said Article.

For further answer to said Article, this defendant has no knowledge as to the course which the Kansas City Southern Railway Company will attempt to pursue; that

as to this defendant its situation as to its duty in the premises is stated as fully as possible in its answer to Article X, and its actions will be guided accordingly. Defendant respectfully shows that the remaining allegations of the said Article consist of allegations of conclusions of law, to which this defendant is not obliged to reply.

XLIX

For answer to the allegations of Article XLIX of said complaint, this defendant admits the allegations as to no complaint having been filed by the connecting lines referred to, and admits the allegations as to concurrence in said divisions and satisfaction with the same to the extent set forth in this defendant's answer to Article X herein, and admits the allegation that evidence was presented by the defendants named in the proceedings referred to with regard to the reasonableness and justness of said division.

Wherefore this defendant prays that after all proper proceedings the complaint herein be dismissed in so far as against this defendant, and for any other or further order or decree that may be proper in the premises, and for costs and general relief.

(Signed) Denegre, Leroy & Chaffe, Solicitors for Louisiana Western Railroad Company, Defendants.

[File endorsement omitted.]

[fol. 805] In United States District Court

Exhibit in Evidence

U. S. District Court. Filed Nov. 19, 1926. W. B. Lee, Clerk, Western District of Louisiana

Interstate Commerce Commission

Questions to be answered by the Brimstone Railroad & Canal Company in connection with proceedings before the Interstate Commerce Commission in Docket 12969:

No. 1. Corporate name of respondent, and location.

Ans. Brimstone Railroad & Canal Company. Sulphur Mine, Calcasieu Parish, State of Louisiana. (A copy of the Company's Charter is attached hereto as Exhibit "A").

No. 2. Character and extent of control of respondent, through stock-holdings or otherwise, by corporations, firms or individuals engaged in lumbering, mining, manufacturing or other traffic producing operations on respondent's line.

Ans. The Capital Stock consists of 2,000 shares of a par value of $100.00 each, and is held as follows:

The Union Sulphur Company	1,995 shares
Henry D. Whiton	1
C. A. Snider	1
S. W. Maxwell	1
J. Toniette	1
P. K. Kelley	1
Total	2,000 shares

No. 3. To what extent are the officers of respondent identified with controlling or affiliated industries? In this connection show to what extent, if at all, persons serving respondent serve also controlling or affiliated industries, the total compensation received by each such person, and the portion paid by respondent.

Ans. The officers of the Brimstone Railroad & Canal Company are identified with The Union Sulphur Company in the manner shown below. The major portion of their salaries is paid by the Union Sulphur Company.

[fol. 806]

Name	B. R. R. & C. Co.	T. U. S. Co.	Proportion of yearly salary paid by B. R. R. & C.
Henry Whiton	Treas. & Genl. Mgr.	President	$1,000.00
C. A. Snider	Vice - Pres. & Asst. Treas.	Secy. & Treas.	1,000.00
S. W. Maxwell	President	Asst. Secy.	1,000.00
P. K. Kelley	Secretary		666.48
G. Scherff	Auditor	Asst. Auditor	1000.00
J. R. Gordon	Traffic Mgr.	Traffic Mgr.	2,500.00
A. R. Fallon	Asst. T. Mgr.	Asst. T. Mgr.	4,200.00

No. 4. Aggregate length of tracks operated (in miles and fractions), indicating standard-gauge and narrow-gauge tracks separately:

Ans. Main Tracks:

(a) Owned	7 39 miles
(b) Leased	
(c) Trackage Rights	2 86
Spurs and Sidings:	
(d) Owned	1 68
(e) Leased	
(f) Trackage Rights	6 90 (USCO) 80 (SPCO)
Aggregate length of all tracks operated:	
(g) Main Track	10 25 miles
(h) Spurs & Sidings	9 38 "
(i) Total	19 63 "

No. 5. Owners of tracks leased or operated under trackage rights, and substance of leases or trackage contracts.

Ans. (a) Kansas City Southern Ry. Co. owns the 2.86 miles of main track leased to respondent. Trackage rights are over that portion of the Lake Charles Branch, and Lockport Branch of the K. C. S. Railway Company between the connection with the track of the Brimstone Railroad & Canal Company near Lockport Junction, and the end of the Kansas City Southern Railway Company's Lockport Branch beyond Lockport, including the use of the Wye. The trackage rights granted under the contract cover the joint use of the leased line for movement of sand and shells.

[fol. 807] (b) The Respondent operates over 6.9 miles of the tracks of The Union Sulphur Company under a verbal agreement, handling and placing empty and loaded cars for the proprietary Company and for the general public. The respondent also uses under the verbal agreement, a section of The Union Sulphur Company's warehouse as a freight station. Tracks adjacent to the warehouse are used as

team tracks by the Respondent, from which the general public receives and ships a considerable quantity of freight.

(c) Under a verbal agreement, the Respondent operates over .80 miles of side track owned by the Southern Pacific Company at Brimstone Junction for the purpose of interchanging freight at that point.

No. 6. State book value of the various classes of property, including materials and supplies owned by respondent December 31st, 1920 and the amount of reserve for accrued depreciation. Show separately property claimed to be used in public service and property used in service which a common carrier could not be required to perform.

Ans. Road	$126,490 26
Equipment	370,155 60
Canal Right-of-way	13,239 14
General expenditures	85 50
Materials & Supplies	10,076 96
Total Property Investment	$520,047 46

Amount of reserve for accrued depreciation.

Road	$21,330 80
Equipment	55,627 50
Canal right-of-way	2,898 33
Total depreciation	$79,856 63

No property used in service that a common carrier could not be required to perform.

No. 6. (a) Is the book value original cost?

Ans. Yes, plus subsequent addition and betterments.

No. 6. (b) If not, how was it arrived at, and what was the original cost?

Ans. See answer to section (a) above.

No. 7. If there has been a valuation of either the property owned or the property used but not owned by respondent, state its nature, extent, date, by whom made, method used, results obtained, and any changes in the property since the valuation.

Ans. The Division of Valuation of the Interstate Commerce Commission has completed its appraisal and inventory of property, but no report thereon has been made.

Respondent is causing a physical valuation to be made of its properties, the results of which have not been completed at the time this questionnaire is answered.
[fol. 808] It is contemplated that the results of the said valuation will be completed and available to the Commission at the time of the hearing in this proceeding.

No. 8. Are respondent's tracks and road bed in such condition as to make operation over them of trunk-line power and equipment safe and practical? State also to what extent, if at all, trunk-line power is so operated.

Ans. Yes. No trunk-line power is operated over respondent track. However, all power operate by respondent is standard trunk-line equipment.

No. 9. Attach map or sketch of respondent's road, showing, as of date of return, location of plants of controlling industry, affiliated industries, and other industries served, classification and storage yards, public team tracks, stations, interchange tracks, and names and junction points of trunk-line connections.

Ans. Map of respondent's road is attached hereto as Exhibit "B."

No. 10. Equipment of operated, indicating whether the standard or narrow gauge.

Ans. —

	Owned	Leased	Total
(a) Locomotives	3		3
(b) Passenger cars			
(c) Freight cars	156		156
(d) Company service Cars			
(e) Other equipment			

All Standard Trunk Line Equipment.

No. 11. Owners of leased equipment and substance of leases.

Ans. No equipment leased.

No. 12. Interchange of equipment:

(a) What equipment of respondent is interchanged with connecting trunk-line carriers?

Ans. All cars are interchanged with both our trunk line connections.

(b) Is respondent a member of the American Railway Association?

Ans. Respondent is not a member of the American Railway Association. We took no action in connection with the

invitation forwarded to us under date of Oct. 10, 1919, by the General Secretary of the American Railway Association inviting us to make application for an associate membership in the American Railway Association.

[fol. 809] (e) State basis of settlement for detention or use of cars as between respondent and trunk lines, and amounts so received and paid by respondent during calendar year 1920.

Basis of settlement between respondent and trunk lines on trunk line equipment is per diem association rules, except that on respondent's equipment delivered trunk-line connection we receive settlement on mileage basis, attached hereto is a statement of the amounts received by respondent for the use of its cars paid during the calendar year 1920 by trunk lines or exhibit "C". There is also attached a statement of the amounts paid by respondent to its trunk line connections for the use of cars while on respondent's rails during the calendar year 1920, or Exhibit "D".

(d) Does respondent receive per diem reclaims from its connections? If so, state the basis and the aggregate amount of reclaim receive during the calendar year 1920.

Ans. No.

(e) Do trunk lines connecting with respondent collect demurrage from shippers or receivers served by respondent on cars placed by respondent for loading or unloading or does respondent collect such demurrage?

Ans. Respondent collects demurrage from shippers and receivers served by it.

(f) If the latter, does respondent collect the demurrage for itself, settling with the trunk lines on a different basis, or as agent for the trunk lines, turning over the amount collected without deduction?

Ans. Respondent collects demurrage for itself and settles with its trunk line connections on Per Diem Agreement Rules of the American Railway Association.

(g) Enumerate the shippers or receivers of freight served by respondent who have executed an average demurrage agreement covering cars placed by respondent for loading or unloading; either (a) with respondent or (b) with any of the trunk lines.

Ans. The Union Sulphur Company has executed an average demurrage agreement with respondent.

No. 13. Give the following analysis of traffic *of traffic* for the calendar year 1920:

Ans.

	Number of tons	Number of cars	Amount of revenue
Interchange service:			
(a) Between plants of controlling industry and junctions with connecting carriers	958,438 74	18,436	$243,163 63
(b) Between plants of affiliated industries and junctions with connecting carriers	None	None	None
[fol. 810]			
(c) Between independent industries and junctions with connecting carriers	1,453	57	$3,550 33
(d) Between team tracks or freight stations and junctions with connecting carriers	1,222	47	637 88
			4,288 21
Plant and inter-plant service:			
(e) For controlling or affiliated industries	None	None	None
(f) For independence industries	None	None	None
Local switching:			
(g) Between plants of controlling or affiliated industries and other industries, team tracks or stations	None	None	None

(h) Between independent industries	None	None		None
(i) Between team tracks or between freight stations	None	None		None
(j) Other local switching	None	None		None
Overhead switching:				
(k) Between trunk lines	None	None		None
(l) Between trunk lines and a public wharf or dock served by respondent	None	None		None
Less than carload traffic:				
(m) For the controlling or affiliated industries	289 13	38		982 15
(n) For other industries and the public	112 13			
Other Revenue:				
(o) Passenger Revenue	None	None		None
(p) Mail revenue	None	None		None
(q) Express revenue	None	None		None
(r) Miscellaneous revenue, divided between that received from controlling or affiliated industries and that received from the public	None	None		None

[fol. 811]

No. 14. State in detail as to subdivisions of question 13, where applicable, the number of cars and tons handled in interstate or foreign commerce, that is, excluding movements wholly within one state and not subject to the interstate commerce act. Divide revenue received in a similar way.

Ans. To question 13 (a)	Number of tons	Number of cars	Amount of revenue
Interstate	951,743 74	18,250)	$243,163 63
Intrastate	6,695 00	186)	
To question 13 (b)	None	None	None
To question 13 (c)			
Interstate	125	9)	3,550 33
Intrastate	1,328	48)	
To question 13 (d)			
Interstate	807 00	24)	637 88
Intrastate	415	23)	
			247,351 84
To question 13 (e)	None	None	None
To question 13 (f)	None	None	None
To question 13 (g)	None	None	None
To question 13 (h)	None	None	None
To question 13 (i)	None	None	None

To question 13 (j)	None	None	None
To question 13 (k)	None	None	None
To question 13 (l)	None	None	None
To question 13 (m)			
Interstate	No record	No record	No record
Intrastate	No record	No record	No record
To question 13 (n)			
Interstate	No record	No record	No record
Intrastate	No record	No record	No record
To question 13 (o)	None	None	None
To question 13 (p)	None	None	None
To question 13 (q)	None	None	None
To question 13 (r)	None	None	None

[fol. 812] No. 15. State in detail as to each subdivision of question 13, where applicable, substantial changes in the extent and manner of performing such service and in the compensation therefor that have occurred from date of organization to present time.

Ans. Service performed by respondent substantially the same from date of organization to present time. Copies of division sheets covering the interchange of traffic with our trunk line connections from the date of organization of the road in the present time are attached hereto as Exhibit "E."

No. 16. State in detail whether or not the service performed for shippers or receivers of freight controlling or affiliated with respondent differs in any way (a) from that performed by respondent for independent shippers or receivers or (b) from the service which would be performed for the former if they were served directly by the trunk lines instead of by respondent.

Ans. (a) None whatever.

(b) None whatever.

No. 17. State whether the interchange of cars between respondent and each of its trunk line connections is made at the junction point, or at some designated point on the track of the trunk line, an appreciable distance beyond the junction.

Ans. Interchange of cars made at junction points with our trunk line connections.

No. 18. Average length of haul:

(a) Between the plants of the controlling or affiliated industries and the junctions with connecting carriers or other interchange points.

Ans. Average haul to Brimstone Junction connection with the Southern Pacific (Louisiana Western Railroad) 3.50 miles; average haul to Lockport Junction connection with Kansas City Southern Railway 15.28 miles; average haul to both junctions, based on straight average, 9.39 miles. The above figures showing the average haul to Brimstone Junction connection and to Lockport Junction connection include the haul of the empty car in one direction and the loaded car in the opposite direction.

(b) Between independent industries and the junction with connecting carriers or other interchange points.

Ans. Approximately 6 miles.

(c) Between team tracks or freight stations and the junctions with connecting carriers or other interchange points.

Ans. Approximately 6 miles.

Explanation of answer (a) (b) and (c) to question No. 18. The annual report for 1920 shows average haul .94 miles. That figure does not include the entire actual movement of loads, as it does not include the movement over the tracks of the Union Sulphur Company that are owned by The Union Sulphur Company, but used by the Brimstone [fol. 813] Railroad under trackage agreement neither does it includ ethe movement over the tracks of the Southern Pacific near Brimstone Junction that are used by the Brimstone Railroad under trackage agreement.

Show in each case what proportion of the movement for the distances given is over respondent's track, over the tracks of the trunk line, and over plant tracks owned and maintained by the industry served.

Ans. On Union Sulphur Company traffic the 3.50 mile haul is divided as follows: 1 mile over respondent's leased track at Southern Pacific interchange; 1.50 miles over respondent's track; 1.00 mile over Union Sulphur Co. tracks. On Union Sulphur Company traffic from Kansas City Southern interchange, the average haul of 15.28 miles is divided as follows: over respondent's track 14.28 miles; over Union Sulphur Company's track, 1 mile. The average distance haul between independent industries and junctions of connecting carriers or other interchange points of 6 miles, is estimated by taking the movement of traffic delivered to the public at the respondent's station at Sulphur Mine on the tracks of the Union Sulphur Co., team track deliveries on the tracks of the Union Sulphur Co., and the movement of freight to other points on the Lockport Division of respondent's line.

No. 19. Compensation:

(a) Allowances or divisions made by connecting carriers:

(1) per car

(2) Per ton

(3) Per 100 pounds

(4) Percentage of joint rates

Answer. Copies of all current divisions covering interchange of traffic with both of respondent's trunk-line connections are attached hereto for the information of the Commission and are made a part hereof as Exhibit "F."

(b) Charges made in addition to the trunk line rate for interchange switching for each industry located on *on* the line:

Ans. None.

(c) Charges for plant and inter plant switching:

(1) Per car (2) Per other unit.

Ans. None.

(d) Local Switching:

(1) Per car (2) Per other unit.

Ans. None.

(e) Switching between trunk lines:

(1) Per car (2) Per other unit.

Answer. None.

(f) Less than carload traffic:

(1) Per 100 pounds.

(2) Other unit.

(3) In trap cars, per car.

[fol. 814] Copies of Brimstone Railroad & Canal Company's Local and Proportional Freight Tariff No. 5 D, I. C. C. No. 22, applying on commodities between stations on respondent's road are attached hereto as Exhibit "G."

No. 20. State in detail as to each subdivision of question 19, by whom the compensation is paid, and under what tariff, contract or agreement, furnishing copies thereof, or reference thereto if on file with the Commission, and stating also how such compensation compares with that received by trunk lines or other industrial railroads in the same rate district for similar services.

Ans. See copies of current division sheets covering all traffic interchanged with both respondent's trunk line connections filed in answer to question 19 as our Exhibit "F." The divisions paid to the respondent by its trunk line connections in many cases are considerably lower than the divisions allowed by trunk lines to other short line railroads in the same rate district for similar services. As evidence of the fact that these divisions allowed the respondent are substantially lower than the divisions allowed other short line railroads in the same rate district, there is attached

hereto a statement of what division information we have been able to obtain together with copies of division sheets which is filed as our Exhibit "H."

No. 21. Does respondent file tariffs, either directly, or indirectly through any other line? If so, what lines?

Ans. Respondent publishes and files its own tariffs direct with the Commission also through publication agencies. It concurs in tariffs filed by Southern Pacific and Kansas City Southern Railroads and various tariff publication agencies applying on traffic to and from points on respondent's line via the Southern Pacific and Kansas City Southern. Copy of our Freight Tariff Index is attached hereto, Exhibit "I." This publication contains a list of the tariffs in which the respondent is a participating carrier.

No. 22 Does respondent publish rates for less than carload traffic?

Ans. Yes.

No. 23. Does respondent issue bills of lading, switching tickets or transfer slips? State generally the methods employed in waybilling freight and in collecting freight charges.

Ans. Respondent issues bills of lading. All traffic is handled under through waybilling arrangement settling freight charges on interline monthly accounts with our direct trunk line connections in accordance with railway accounting rules.

No. 24. Does respondnet file annual and other reports with, and keep its accounts as required by, this Commission? If not, attach copies of yearly income statements and balance sheets covering period from January 1, 1914, to December 31, 1920.

Ans. Respondent files annual and other reports with the Interstate Commerce Commission and keeps its books in the manner prescribed therefor by the Commission.

No. 25. Passenger service:

(a) Does respondent provide a passenger service?

(b) If so, give the number of passengers carried during the calendar year 1920.

(c) To what extent is the passenger service maintained for the benefit of employees of controlling or affiliated industries?

[fol. 815] Ans. to No. 25. None.

No. 26. State whether the plant switching performed for controlling or affiliated industries or for independent industries is wholly over tracks not used in serving any other shipper or receiver of freight, or is between portions of the plant separated by an appreciable distance, and over tracks also used in serving other shippers or receivers of freight.

Ans. Freight is received from and delivered to the Union Sulphur Company on tracks owned by that Company, the first terminal service or spotting of cars is performed by the respondent on the tracks in the Union Sulphur Company's plant. The respondent also uses the industrial plant tracks of the Union Sulphur Company at Sulphur Mine on both carload and less than carload shipments for the general public in the immediate vicinity thereof as may be required for public convenience. The respondent performs no inter or intra-plant switching for controlling or affiliated industries.

No. 27. State whether the interchange service between the trunk lines and the industries is performed as an operating matter, and at times convenient for respondent, or as an accommodation to the respective shippers and receivers of freight, at times particularly specified by them, and as an incident to some manufacturing process.

Ans. Respondent's service between its trunk line connections and the industries it serves is performed as an operating matter and at times convenient to the respondent. It is not performed at times particularly convenient to shippers and cannot in any sense be considered as an incident to any manufacturing process. The respondent's train schedules are arranged so as to conform with the operating schedules of its trunk line connections.

No. 28. Enumerate shippers and receivers of carload freight on rails of respondent, stating as to each—

Ans.

	A	B	C
Shipper	Nature of business	Whether or not it has industrial tracks or sidings	Whether or not it has industrial railway
Union Sulphur Co.	Sulphur producers	Yes	No
Jasper Stine	Planter	None	None
E. L. Gorham	"	"	"
Employees Store	Merchants	"	"
Houston River Canal Co.	Irrigating Canal	"	"
Krause & Mannigan	Planters	"	"

(d) Whether or not respondent operates over industrial tracks mentioned in (b) or (c), and if so, compensation therefor.

[fol. 816] Ans. (d) Respondent operates over certain tracks of the Union Sulphur Company at Sulphur Mine in serving public team tracks and freight station for which no compensation is paid.

(e) Gauge, aggregate mileage, motive power, and equipment owned and operated in connection with the industrial tracks and sidings or industrial railways mentioned in (b) or (c), and brief description of work done by the industry or the industrial railway.

Ans. (e) Standard gauge, aggregate mileage 9.61 miles, seven standard gauge locomotives, fifteen flat cars, ten box cars, about seventy-five dump cars. The Union Sulphur Company is engaged in the mining of sulphur and the above described industrial tracks and equipment are employed by them as an adjunct in their mining operation.

(f) Whether or not respondent and industry owning any industrial track or railway mentioned in (b) or (c) interchange equipment or lease from each other motive power or equipment.

Ans. (f) None.

No. 29. Does respondent, to any extent, classify its operating expenses to determine the cost of the freight service? If so, state fully the extent, the methods employed, and the results of such classification.

Ans. The respondent handles nothing but freight traffic, therefore, all expenses are chargeable to freight service.

No. 30. Submit any data available which show, or tend to show, any change in the cost per car, per engine hour, or for any other unit, for performance service at the present time, as compared with similar service in 1914.

Ans.

Item	Cost 1914	Cost 1921	Per cent of over 1914
Fuel oil	$9.44 per bbl.	$1.44 per bbl.	52.5
Cross ties	18.00 per M	32.00 per M	77.7
Steel rails	35.00 per ton	55.00 per ton	57.1
Steel gondolas	1,280.00 per car	2,250.00 per car	74.4
Spikes	2.34 per cwt.	4.75 per cwt.	103.0
Track bolts	2.94 per cwt.	5.75 " "	95.5
Locomotive Engr.	4.00 per day	6.80 per day	70.0
Firemen	2.05 " "	4.80 " "	134.1
Switchmen	3.12 " "	6.40 " "	105.1
Engine Hostlers	2.05 " "	5.20 " "	153.6
Section Foreman	2.65 " "	6.80 " "	156.6
Section Laborer	1.98 " "	3.98 " "	101.0

[fol. 817] Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

I. C. C. No. 12969

Respondent's Exhibit No. 10

Brimstone Railroad & Canal Company

Balance Sheet, August 31, 1921

Assets

Capital Investment:		
Road	$126,519 92	
Equipment	392,174 40	
General Expenditures	85 50	
Physical Property—Canal Right of Way	13,239 14	
Total Capital Investment		$532,018 96
Current Assets:		
Cash	42,335 41	
Materials & Supplies	7,968 26	
Net Balances due from Agents	50,035 15	
Miscellaneous Accounts Receivable	211 91	
Total Current Assets		100,550 73

Unadjusted Debits:		
Unadjusted Freight Revenue		9,000 00
Total Assets		$641,569 69
Liabilities		
Capital Stock		$200,000 00
Current Liabilities:		
Audited Accounts & Wages Unpaid	$549 50	
Freight Balances due other roads	68,640 51	
War Tax Collected—U. S. Government	2,763 48	
Union Sulphur Company	41,528 44	
Total Current Liabilities		113,481 93
Unadjusted Credits:		
Accrued Depreciation—Road	21,330 80	
Accrued Depreciation—Equipment	79,555 21	
Accrued Depreciation—Physical Property	2,898 33	
Tax Liability	7,200 00	
Unadjusted Hire of Freight Cars	60 00	
" Prepaid Freight.	23,182 74	
Total Unadjusted Credits		134,227 08
Profits & Loss		193,860 68
Total Liabilities		$641,569 69

Certified Correct:

——— ———, Auditor.

Interstate Commerce Commission. Docket No. 12969. Exhibit No. 10. Resp. Witness Maxwell. Date, 10/18/21. Steno., Macpherson.

[fol. 818] Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

I. C. C. No. 12969

RESPONDENT'S EXHIBIT No. 11

Brimstone Railroad & Canal Company

Income Account for the Six Months' Period Ended June 30th, 1921

I. Operating Income.

Railway Operating Revenues:		
Freight	$96,091 60	
Demurrage	241 00	
Total Operating Revenues		$96,332 60
Railway Operating Expenses:		
Maintenance of Way & Structures	8,380 79	
Maintenance of Equipment	41,636 52	
Traffic	7,525 32	
Transportation	10,844 41	
General	5,285 91	
Total Operating Expenses		73,592 95
Net Revenue from Railway Operations		22,739 65
Railway Tax Accruals		3,810 48
Railway Operating Income		18,929 17

II. Nonoperating Income.

Hire of Freight Cars	2,844 59	
Income from Unfunded Securities & Accounts	332 45	
Miscellaneous Income	800 00	
Total Nonoperating Income		3,977 04
Gross Income		22,906 21

Recapitulation of study of operating costs, for the year ended December 31, 1921, including taxes and adjustments but not including re
& Canal Company in the conduct of the common carrier service as developed during the test period May 26 to June 1, 1922, inclu
Southern Railway Company, based, however, on the average number of loaded cars interchanged with those companies for the fi
interchanged with those companies during the year ended December 31, 1921, equated to a seven days period, and the number of lo

Cars interchanged with	Common Zone							Average tim
	Total number of cars handled	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Aver number minut per c
Southern Pacific Company:								
On basis of average number of loaded cars interchanged for five years period ended December 31, 1921, equated to a seven days period	316	2806	8 8806	$47 0850	$2,201 91	$6 9687	377	1 19
On basis of number of loaded cars interchanged during the year ended December 31, 1921, equated to a seven days period	280	2853	10 1171	47 0830	2,223 10	7 3391	377	1 34
On basis of number of loaded cars interchanged during period January to May, 1922, equated to a seven days period	325	2847	8 7589	47 0830	2,234 09	6 8733	377	1 16
The Kansas City Southern Railway Company:								
On basis of average number of loaded cars interchanged for five years period ended December 31, 1921, equated to a seven days period	44	391	8 8806	47 0830	306 83	6 9687	.....	.....
On basis of number of loaded cars interchanged during the year ended December 31, 1921, equated to a seven days period	36	364	10 1171	47 0830	285 64	7 9391	.....	.....
On basis of number of loaded cars interchanged during period January to May, 1922, equated to a seven days period	40	350	8 7589	47 0830	274 65	6 8733	.....	.....

Recapitulation of study of operating costs, for the year ended December 31, 1921, including taxes, adjustments and return on value of p
Company in the conduct of its common carrier service as developed during the test period May 26 to June 1, 1922, inclusive, showing
Railway Company, based, however, on the average number of loaded cars interchanged with those companies for the five years e
changed with those companies during the year ended December 31, 1921, equated to a seven days period, and the number of loaded c

Cars interchanged with	Common Zone							Average time a
	Total number of cars handled	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Aver number minut per ca
Southern Pacific Company:								
On basis of average number of loaded cars interchanged for five years period ended December 31, 1921, equated to a seven days period	316	2806	8 8806	$61 8822	$2,894 02	$9 1591	377	1
On basis of number of loaded cars interchanged during the year ended December 31, 1921, equated to a seven days period	280	2853	10 1171	61 8822	2,921 87	10 4345	377	1
On basis of number of loaded cars interchanged during period January to May, 1922, equated to a seven days period	325	2847	8 7589	61 8822	2,936 31	9 0337	377	1
The Kansas City Southern Railway Company:								
On basis of average number of loaded cars interchanged for five years period ended December 31, 1921, equated to a seven days period	44	391	8 8806	61 8822	403 27	9 1591	.....	.....
On basis of number of loaded cars interchanged during the year ended December 31, 1921, equated to a seven days period	36	364	10 1171	61 8822	375 42	10 4345	.....	.....
On basis of number of loaded cars interchanged during period January to May, 1922, equated to a seven days period	40	350	8 7589	61 3822	360 98	9 0337	.....	.....

; WITNESS, —— ——; EXHIBIT NO.—

Railroad & Canal Company

including return on value of property held for and used in the service of transportation for the public generally, of the Brimstone Railroad 1, 1922, inclusive, showing separately cost of handling its interchanged business with the Southern Pacific Co. and the Kansas City ies for the five years ended December 31, 1917, 1918, 1919, 1920, and 1921 equated to a seven days period, the number of loaded cars e number of loaded cars interchanged with those companies during the period January to May, 1922, equated to a seven days period

Average time and cost of handling through zones

	Southern Pacific Zone				Kansas City Southern Zone					Total average cost per car			
										Average cost per car in			
tal er of ites ired	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Common Zone	Sou. Pac. Zone	K. C. S. Zone	Total
7	1 1930	$57 7066	$362 59	$1 1474						$6 9687	$1 1474		$8 1161
7	1 3464	57 7066	362 59	1 2930						7 9391	1 2950		9 2341
7	1 1600	57 7066	362 59	1 1157						6 8733	1 1157		7 9890
					292	6 6364	$117 3555	$571 13	$12 9802	6 9687		$12 9802	19 9489
					292	8 1111	117 3555	571 13	15 8647	7 9391		15 8647	23 8038
					292	7 3000	117 3555	571 13	14 2783	6 8733		14 2783	21 1516

on value of property held for and used in the service of transportation for the public generally, of the Brimstone Railroad & Canal clusive, showing separately co t of handling its interchanged business with the Southern Pacific Company and the Kansas City Southern e five years ended December 31, 1917, 1918, 1919, 1920, and 1921, equated to a seven days period, the number of loaded cars inter- mber of loaded cars interchanged with those companies during the period January to May, 1922, equated to a seven days period

Average time and cost of handling through zones

	Southern Pacific Zone				Kansas City Southern Zone					Total average cost per car			
										Average cost per car in			
tal er of ites ired	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Common Zone	Sou. Pac. Zone	K. C. S. Zone	Total
7	1 1930	$60 1973	$378 24	$1 1970						$9 1591	$1 1970		$10 3561
7	1 3464	60 1973	378 24	1 3509						10 4345	1 3509		11 7854
7	1 1600	60 1973	378 24	1 1638						9 0337	1 1638		10 1975
					292	6 6364	$149 3322	$726 75	$16 5170	9 1591		$16 5170	25 6761
					292	8 1111	149 3322	726 75	20 1875	10 4345		20 1875	30 6220
					292	7 3000	149 3322	726 75	18 1688	9 0337		18 1688	27 2025

III. Deductions from Gross Income.

None .	None.
Net Income Transferred to Profit & Loss	$22,906 21

Interstate Commerce Commission. Docket No. 12969. Exhibit No. 11. Resp. Witness Maxwell. Date, 10/18/21. Steno., Macpherson.

[fol. 819] Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

I. & S. Docket No. 12969, Witness ——, Exhibit No 31

Brimstone Railroad & Canal Company

Operating Cost Study

Exhibit showing cost of interchanging cars with the Southern Pacific Company and The Kansas City Southern Railway Company, based on time study as to engine hours and operating costs, taxes and adjustments for the year 1921, equated to the test period, as developed in test period May 26 to June 1, 1922, but number of loaded cars handled based on average number of cars handled per year for the five years ended December 31, 1917, 1918, 1919, 1920 and 1921; the number of cars handled during the year 1921 and the number of cars handled during the period January to May, 1922, inclusive, equated in each instance to a seven days' period.

Interstate Commerce Commission. Docket No. 12969. Exhibit No. 31. Respondent's Witness Bacon. Date, 11/14/22. Reporter, Harnden.

(Here follows side folio page 820)

Brimstone Railroad & Canal Company

Statement showing the number of loaded cars interchanged by the Brimstone Railroad & Canal Company with the Southern Pacific Company and the Kansas City Southern Railway Company during the years ended December 31, 1917, 1918, 1919, 1920, and 1921 and during the five months January to May, 1922, inclusive; also showing the number of loaded cars interchanged by periods equated to a seven days period and the average yearly interchanged business for the five years ended December 31, 1921, equated to a seven days period

Year	Interchanged with Southern Pacific Co.	Interchanged with Kansas City Southern Ry.	Total interchanged	Equated to a seven days period: Interchanged with Southern Pacific Co.	Equated to a seven days period: Interchanged with Kansas City Southern Ry.	Equated to a seven days period: Total interchanged
1917	22210	2566	24776	426	49	475
1918	18270	5147	23417	350	99	449
1919	9629	838	10467	185	16	201
1920	17760	1025	18785	340	19	359
1921	14618	1865	16483	280	36	316
Total	82487	11441	93928	1581	219	1800
Average number loaded cars interchanged yearly for the 5 years period	16497	2288	18785	316	44	360
Jan'y to May, 1922, inclusive	7007	866	7873	325	40	365

[fol. 822] Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana

I. & S. Docket No. 12969, Witness ——, Exhibit No. 32

Brimstone Railroad & Canal Company

Operating Cost Study

Exhibit showing cost of interchanging cars with the Southern Pacific Company and The Kansas City Southern Railway Company based on time study as to engine hours and number of cars handled as developed during test period May 26 to June 1, 1922; also as to taxes for the year 1921 and adjustments, but audited operating costs based on the average yearly operating expenses for the five years ended December 31, 1917, 1918, 1919, 1920, and 1921.

Interstate Commerce Commission. Docket No. 12969. Exhibit No. 32. Respondent's Witness Bacon. Date 11 14 22. Reporter, Harnden.

[fol. 823] Filed Nov. 19, 1926. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana.

EXHIBIT 33, I. C. C. DOCKET 12969; WITNESS, —— ——

Southern Pacific Lines

Statement Showing Results of Cost to the Brimstone Railroad and Canal Co. if diversions of traffic should occur, detailing the result by stages of 25 cars, bringing out the cost per car at both junctions

	Number of cars interchanged		Cost to deliver to each junction		Cost per car	
	S. P. Junct.	K. C. S. Junct.	S. P.	K. C. S.	S. P. Junct.	K.C.S.Junct.
Result of test as per exhibit —:						
Operating expenses and taxes:						
Common zone			$2,302.68	$206.06	$5.1514	$5.1514
S. P. zone			362.59	.....	.8111	14.2783
K. C. S. zone			.....	571.13	.....	.....
Total	447	40	2,665.27	777.19	5.9625	19.4297
Anticipated diversions in stages of 25 cars	422	65	2,536.48	905.98	6.0106	13.9392
	397	90	2,407.70	1,034.76	6.0647	11.4973
	372	115	2,278.91	1,163.55	6.1261	10.1178
	347	140	2,158.14	1,292.32	6.1964	9.2309
	322	165	2,021.34	1,421.12	6.2775	8.6128
	297	190	1,892.56	1,549.90	6.3723	8.1574
	272	215	1,763.77	1,678.69	6.4844	7.8079

	247	240	1,634.99	1,807.47	6.5194	7.5311
	222	265	1,506.20	1,936.26	6.7847	7.3066
	197	290	1,377.42	2,065.04	6.9920	7.1208
	172	315	1,248.63	2,193.93	7.2595	6.9645
	147	340	1,119.85	2,322.61	7.6180	6.8312
	122	365	991.06	2,451.40	8.1234	6.7162
	97	390	862.28	2,580.18	8.8895	6.6158
	72	415	733.49	2,708.97	10.1874	6.5276
	47	440	604.71	2,837.75	12.8662	6.4494
	22	465	475.92	2,966.54	21.8327	6.3797
	.....	487	.....	3,442.46	.....	7.0687
Operating expenses, taxes and interest on investment:						
Common zone	.....	.....	$3,026.47	$270.82	$6.7706	$6.7706
S. P. zone	.....	.....	378.24	.....	.8462	.....
K. C. S. zone	.....	.....	.....	726.75	.....	18.1698
Total	447	40	404.71	997.57	7.6168	24.9398
Anticipated diversions in stages of 25 cars...	422	65	3,235.43	1,166.85	7.6669	17.9515
	397	90	3,066.17	1,336.11	7.7234	14.8457
	372	115	2,896.90	1,505.38	7.7874	13.0903
	347	140	2,727.64	1,674.64	7.8606	11.9617
	322	165	2,558.38	1,843.90	7.9453	11.1752
	297	190	2,289.12	2,013.16	8.2809	10.5956
	272	215	2,219.34	2,182.44	8.1612	10.1509

Statement Showing Results of Cost to the Brimstone Railroad and Canal Co., etc.—Continued

Number of cars interchanged		Cost to deliver to each junction		Cost per car	
S. P. Junct.	K. C. S. Junct.	S. P.	K. C. S.	S. P. Junct.	K. C. S. Junct.
247	240	2,050 58	2,351 70	8 3019	9 7956
222	265	1,881 31	2,520 96	8 4744	9 5131
197	290	1,712 05	2,690 23	8 6909	9 2767
172	315	1,542 78	2,859 50	8 9697	9 0776
147	340	1,373 52	3,028 76	9 3437	8 9081
122	365	1,204 26	3,198 03	9 8709	8 7617
97	390	1,035 00	3,367 28	10 6701	8 6341
72	415	865 72	3,536 56	12 0239	8 5218
47	440	696 46	3,705 82	14 8183	8 4223
22	465	527 19	3,375 09	23 9622	8 3335
.....	487	.....	4,402 28	.....	9 0398

[fol. 824]

COST ST—EXHIBIT No. 37—Filed Nov. 19, 1926. W. B. Lee, Clerk, U. S. District Court, Western District of Louisiana.

The statement below shows a summary for the calendar year 1921 of railway operating expenses, railway tax accruals, and adjustments previously referred to, made to cover services and the use of tracks and other facilities furnished to the Brimstone by the Union Sulphur Company, and how these several expenses are equated to the seven-day test period, and the equated amounts thereafter separated and allocated to the common zone, Southern Pacific zone, Kansas City Southern zone, and to expenses common to the three zones

	Total operating expenses including taxes and adjustments	Total operating expenses, taxes and adjustments equated to the test period	Allocation by zones Expenses allocated directly to			Expenses allocated as common to all three zones
			Common zone	Southern Pacific zone	Kansas City Southern zone	
Maintenance of Way and Structures	$15,608.87	$299.34	$60.47	$20.05	$218.82	.....
Maintenance of Equipment	69,363.66	1,330.39	.....	1,129.46	.....	$200.93
Traffic	15,426.76	295.89	.....	.....	.....	295.89
Transportation—Rail Line	26,126.81	501.12	.....	.....	.....	501.12
General	19,900.97	381.66	.....	.....	.....	381.66
Total Railway Operating Expenses	146,427.07	2,808.40	60.47	1,149.51	218.82	1,379.60
Railway Tax Accruals	11,199.06	214.80	41.01	103.86	69.93	.....

Statement—Continued

		Total operating expenses including taxes and adjustments	Total operating expenses, taxes and adjustments equated to the test period	Allocation by zones Expenses allocated directly to			Expenses allocated as common to all three zones
				Common zone	Southern Pacific zone	Kansas City Southern zone	
Use of Union Sulphur Co. Tracks							
Maintenance	$2,686 77						
Interest rental	924 18						
Taxes	27 30	3,638 25	69 78	69 78	.....	.....	.....
Total Railway Operating Expenses including Taxes and Adjustments	$161,264 38	$3,092 98		$171 26	$1,253 37	$288 75	$1,379 60

Interstate Commerce Commission. Docket No. 12869. Exhibit No. 38. Witness, Elmore. Complainant's, Defendant's, Commission's, Respondent's, Protestant's, Intervenor's. Date, 11-15-22. Reporter, Harnden.

(Here follows side folio page 825)

[fol. 825]

Recapitulation of study of operating costs, based on av
in the conduct of its common carrier services as d
generally, showing separately the cost of handlin

Cars interchanged with	Total number of cars handled	Total number of minutes required	Average number of minutes per car	Comm Co en ha
Southern Pacific Company	447	2934	6.5647	$44
The Kansas City Southern Railway Co	40	263	6.5647	4
Total	467	3197	6.5647	$44

Recapitulation of study of operating costs, based on
Company in the conduct of its common carrier s
public generally, showing separately the cost of

Cars interchanged with	Total number of cars handled	Total number of minutes required	Average number of minutes per car	Comm Co en ha
Southern Pacific Company	447	2934	6.5647	$39
The Kansas City Southern Railway Co	40	263	6.5647	3
Total	487	3197	6.5647	$39

I. & S. Docket No. 12969; Witness, —— ——; Exhibit No. —

Brimstone Railroad & Canal Company

on averaged operating expenses for the five years ended December 31, 1917, 1918, 1919, 1920 and 1921, and taxes and adjustments for the year 1921, of the Brimstone Railroad & Canal C
s as developed during the test period May 26 to June 1, 1922, inclusive, not including a charge for return on value of property held for and used in the service of transportation for t
andling its interchanged business with the Southern Pacific Company and the Kansas City Southern Railway Company

Average time and cost of handling through zones

Common zone			Southern Pacific zone					Kansas City Southern zone					C
Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate Engine hour cost	Average cost per car	
$44 4423	$2,173 23	$4 8025	377	8434	$54 0846	$339 83	$ 7602	.....	.....	.....	.....	.....	
44 4423	194 30	4 8025	.....	.....	.....	.....	.....	292	7 3000	$118 9122	$578 71	$14 4678	
$44 4423	$2,368 03	$4 8025	377	8434	$54 0846	$339 83	$ 7602	292	7 3000	$118 9122	$578 71	$14 4678	

d on averaged operating expenses for the five years ended December 31, 1917, 1918, 1919, 1920, and 1921, and taxes and adjustments for the year 1921, of the Brimstone Railro
rrier services as developed during the test period May 26 to June 1, 1922, inclusive, including a charge for return on value of property held for and used in the service of transpor
ost of handling its interchanged business with the Southern Pacific Company and the Kansas City Southern Railway Company

Average time and cost of handling through zones

Common zone			Southern Pacific zone					Kansas City Southern zone					
Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	
$59 2413	$2,896 90	$6 4917	377	8434	$56 5754	$355 43	$ 7953	..	.....	.....	.....	.....	
59 2413	259 68	6 4917	.....	.....	.....	.....	.....	292	7 3000	$150 8887	$734 33	$18 3583	
$59 2413	$3,156 59	$6 4917	377	8434	$56 5754	$355 43	$ 7953	292	7 3000	$150 8887	$734 33	$18 3583	

Docket No. 12969; WITNESS, —— ——; EXHIBIT No. —

Brimstone Railroad & Canal Company

Year ended December 31, 1917, 1918, 1919, 1920 and 1921, and taxes and adjustments for the year 1921, of the Brimstone Railroad & Canal Company for January 1, 1922, inclusive, not including a charge for return on value of property held for and used in the service of transportation for the public Southern Pacific Company and the Kansas City Southern Railway Company

Time and cost of handling through zones

Southern Pacific zone				Kansas City Southern zone					Total average cost per car			
Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate Engine hour cost	Average cost per car	Average cost per car in Common zone	Sou. Pac. zone	K. C. S. zone	Total
.8434	$54.0846	$339.83	$ 7602	.....	.....	.....	.....	.....	$4.8625	$ 7602	.....	$5.6227
.....	.....	.....	.....	292	7.3000	$118.9122	$578.71	$14.4678	4.8625	.....	$14.4678	19.3303
.8434	$54.0846	$339.83	$ 7602	292	7.3000	$118.9122	$578.71	$14.4678	.....	.....	.....	$6.7486

Year ended December 31, 1917, 1918, 1919, 1920, and 1921, and taxes and adjustments for the year 1921, of the Brimstone Railroad & Canal for January 1, 1926 to June 1, 1922, inclusive, including a charge for return on value of property held for and used in the service of transportation for the Southern Pacific Company and the Kansas City Southern Railway Company

Time and cost of handling through zones

Southern Pacific zone				Kansas City Southern zone					Total average cost per car			
Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Total number of minutes required	Average number of minutes per car	Cost per engine hour	Aggregate engine hour cost	Average cost per car	Average cost per car in Common zone	Sou. Pac. zone	K. C. S. zone	Total
.8434	$56.5734	$355.43	$ 7953	.....	.....	.....	.....	.....	$6.4817	$ 7953	.....	$7.2770
.....	.....	.....	.....	292	7.3000	$150.8887	$734.33	$18.3583	6.4817	.....	$18.3583	24.8400
.8434	$56.5734	$355.43	$ 7953	292	7.3000	$150.8887	$734.33	$18.3583	.....	.....	.....	$8.7195

[fol. 826] I. & S. Docket, No. 12969; Witness, —— ——; Exhibit No. —

Brimstone Railroad & Canal Company

Statement showing the number of engine hours worked during the test period, May 26 to June 1, 1922, inclusive, the allocation of operating expenses averaged for the years ended December 31, 1917, 1918, 1919, 1920, and 1921, taxes, adjustments and return on value of property held for and used in the service of transportation for the public generally, for the year ended December 31, 1921, equated to the test period, to the three zones into which the Brimstone Railroad & Canal Company was divided for the purpose of the cost study, and the cost per engine hour in each zone

	Common zone		Sou. Pac. zone		E. C. S. zone		Total	
	Time		Time		Time		Time	
	Hours	Min.	Hours	Min.	Hours	Min.	Hours	Min.
Number of engine hours worked during test period:								
Brimstone R. R. and Canal Co. engine	...	2211	...	377	...	292	...	2880
Union Sulphur Co. engines in performance of common carrier service	...	986	...	...	...	...	...	986
Total	53	17	6	17	4	52	64	26
Operating expenses, including taxes and adjustments (equated) allocated as common to all three zones	.....		.....		.....		$2,394.73	

Statement showing the number of engine hours worked during the test period, May 26 to June 1, 1922, inclusive, etc.—Continued

	Common zone		Sou. Pac. zone		E. C. S. zone		Total	
	Time		Time		Time		Time	
	Hours	Min.	Hours	Min.	Hours	Min.	Hours	Min.
Cost per engine hour (exclusive of Union Sulphur Co. engine time) of the expenses allocated as common to all three zones							49.6819	
Apportionment of the operating expenses, including taxes and adjustments (equated) allocated as common to all three zones, to each zone on basis of number of engine hours (exclusive of Union Sulphur Co. engine time) worked in each zone	$1,890.78		$312.17		$241.79		$2,384.73	
Operating expenses, including taxes and adjustments (equated) allocated directly to each zone	537.25		27.66		336.93		901.34	
Total operating expenses, including taxes and adjustments, equated to the test period	$2,363.03		$339.83		$578.71		$3,286.57	
Cost per engine hour for each zone	$44.4423		$54.0846		$118.9122		$51.0073	

Brimstone Railroad & Canal Company

Statement showing the number of engine hours worked during the test period, May 26 to June 1, 1922, inclusive, the allocation of operating expenses averaged for the years ended December 31, 1917, 1918, 1919, 1920, and 1921, taxes, adjustments and return on value of property held for and used in the service of transportation for the public generally, for the year ended December 31, 1921, equated to the test period, to the three zones into which the Brimstone Railroad & Canal Company was divided for the purpose of the cost study, and the cost per engine hour in each zone

	Common zone		Sou. Pac. zone		E. C. S. zone		Total	
	Time		Time		Time		Time	
	Hours	Min.	Hours	Min.	Hours	Min.	Hours	Min.
Number of engine hours worked during test period:								
Brimstone R. R. and Canal Co. engine	...	2211	...	377	...	292	...	2880
Union Sulphur Co. engines in performance of common carrier service	...	986	...	...	...	...	...	986
Total	53	17	6	17	4	52	64	26
Operating expenses, including taxes and adjustments (equated) allocated as common to all three zones	.....		.....		.....		$2,394.73	

Statement showing the number of engine hours worked during the test period, May 26 to June 1, 1922, inclusive, etc.—Continued

	Common zone		Sou. Pac. zone		E. C. S. zone		Total	
	Time		Time		Time		Time	
	Hours	Min.	Hours	Min.	Hours	Min.	Hours	Min.
Cost per engine hour (exclusive of Union Sulphur Co. engine time) of the expenses allocated as common to all three zones	.....		.....		.....		49.6819	
Apportionment of the operating expenses, including taxes and adjustments (equated) allocated as common to all three zones, to each zone on basis of number of engine hours (exclusive of Union Sulphur Co. engine time) worked in each zone	$1,830.78		$312.17		$241.79		$2,384.73	
Operating expenses, including taxes and adjustments (equated) allocated directly to each zone	537.25		27.66		336.93		901.34	
Total operating expenses, including taxes and adjustments, equated to the test period	$2,363.03		$339.83		$578.71		$3,286.57	
Cost per engine hour for each zone	$44.4423		$54.0846		$118.9122		$51.0073	

Total operating expenses, including taxes and adjustments and return on value of property held for and used in the service of transportation for the public generally	.....	.....	.....	.....
Total operating expenses as above	$2,368.03	$339.83	$578.71	$3,286.57
Return on value of property held for and used in the service of transportation for the public generally	788.55	15.65	155.62	959.82
Total	$3,156.58	$355.48	$734.33	$4,246.39
Cost per engine hour for each zone (including return on value of property, etc.)	$59.2413	$56.5754	$150.8887	$65.9037

(Here follow side folio pages 827, 828, 829 and 830)

[fol. 831] IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT RE EXHIBITS—Filed March 17, 1927

In the course of the proceedings before the Interstate Commerce Commission testimony was introduced concerning the following exhibits:

Exhibit 1: (Maxwell) Charter of the Brimstone Railroad and Canal Company.

Exhibit 2: (Maxwell) Map of the Brimstone Railroad and Canal Company.

Exhibit 3: (Maxwell) Map of the Brimstone Railroad and Canal Company.

Exhibit 4: (Maxwell) Statement showing additional facilities required by the Brimstone Railroad & Canal Co., at Sulphur Mine, La., necessary to enable it to properly care for its ordinary common carrier obligations to the public, were it not for the fact that the Brimstone at present used without compensation, The Terminal facilities of the Union Sulphur Company.

Exhibit 5: (Maxwell) Statement showing plant tracks of the Union Sulphur Company, at Sulphur Mine, Louisiana.

Exhibit 6: (Maxwell) Union Sulphur Company Plant facility tracks used by Brimstone Railroad and Canal Company.

Exhibit 7: (Maxwell) Letter from the Krause & Managan Lumber Company, concerning service of the Brimstone Railroad & Canal Company to the shipper.

Exhibit 8: (Maxwell) Statement showing additional operating expenses that would be incurred by the Brimstone Railroad in providing for itself the necessary terminal facilities at Sulphur Mine, La., and the cost of operating and maintaining same necessary to enable that company to perform its common carrier obligations to the public at that point.

Exhibit 9: (Maxwell) Statement of freight received and forwarded by independent shippers on respondent's road for the first six months of 1921.

Exhibit 10: (Maxwell) Balance sheet of the Brimstone Railroad and Canal Company, of August 31, 1921.

Exhibit 11: (Maxwell) Income Account of the Brimstone Railroad and Canal Company, for the six months period ended June 30, 1921.

Exhibit 12: (Barrow) Map of the State of Louisiana.

[fol. 832] Exhibit 13: (Weaver) Statement showing Divisions allowed the Brimstone Railroad and Canal Company by the Kansas City Southern Railway and as compared with Divisions allowed other short lines of railway by other carriers.

Exhibit 14: (Weaver) Comparative statement of rates divisions allowed Brimstone Railroad and Canal Company and other carriers.

Exhibit 15: (Weaver) Exhibit showing divisions approved for the Brimstone Railroad and Canal Company by the Railroad Administration, as follows:

(Heading and address omitted)

"St. Louis, March 27, 1919.

Mr. Chambers has approved the following allowances to the Brimstone Railroad & Canal Company, effective April 1, 1919:

Sulphur:	Allow B. R. R. & C. Co.
When destined Port Arthur, Sabine or Galveston, Tex., New Orleans, Gretna or Algiers, La., for coastwise movement or export	20c per gross ton
Sulphur:	
When destined points other than those shown above	$2\frac{1}{4}$ per 100 pounds.
Fuel Oil	1c " " "
Brick	2 " " "
Cement	$2\frac{1}{2}$ " " "
Coal	2 " " "
Lumber	2 " " "
Stone	2 " " "
Logs—Brimstone Jct. and Sulphur Mine, La. to Westlake, La.	$3 75 " car

All Other Carload Traffic	3¢ per 100 pounds
Merchandise, L. C. L.	10¢ " " "
Sawdust—Powell Lbr. Co. Mill, La. to Sulphur Mine, La. to divide 50% to Sou. Pac. and 50% to Brimstone R. R. & Canal Company.	$12.50 per car

Please arrange to publish necessary division sheet, sending two copies to the undersigned for our record, and oblige."

Exhibit 16: (Kirkpatrick) Cost of Reproduction New as of 6-30-1918, Based on 1914 Price Level; as follows:

I. Road:

1. Engineering	3,658 00
2. Land for Transportation Purposes	6,922 00
3. Grading	16,141 00
6. Bridges, Trestles & Culverts	4,592 00
8. Ties	17,733 00
9. Rails	23,887 00
10. Other Track Material	3,908 00
Ballast	7,815 00
12. Track Laying & Surfacing	9,721 00
13. Right of Way Fences	48 00
15. Crossings and Signs	1,548 00
[fol. 833] 16. Station and Office Buildings	4,650 00
17. Roadway Buildings	300 00
37. Roadway Machines	606 00
38. Roadway Small Tools	125 00
43. Other Expenditures—Road	368 00
Total: 1 to 43 inc.	$102,922 00

II. Equipment:

51. Steam Locomotives	32,046 00
53. Freight-train Cars	124,155 00
Total: 51 and 53	$156,201 00

III. General Expenditures:

71 to 75 and 77. Other Expenditures General	$1,427 00
76. Interest during construction	7,102 00
Total: 71 to 77	$8,529 00
Grand Total..	$266,752 00

NOTE: The above does not include—Working Capital, Material and supplies and cost of 16 miles of Canal Right-of-Way, and nothing has been included for going concern or appreciation."

Exhibit 17 (Kirkpatrick): Cost of reproduction new as of 12-31-1920, of the Brimstone Railroad and Canal Company, to-wit:

"$266,752	Cost of Reproduction New 6-30-1917 (Bur. of Valuation Quantities)
31,639	Working Capital, 6-30-1918
4,667	Material and Supplies 6-30-1918
13,239	Cost of 16 miles of Right of Way for Canal
$316,297	Cost of Reproduction New as of 6-30-1918
209,475	Additions and Betterments 6-30-1918 to 12-31-1920
$525,772	Total as of 12-31-1920 Based on 1914 Price Level, except Additions and Betterments which are at cost
285,813	110% of All Accounts Included in the $266,752 except Account #2
$811,585	Cost of Reproduction New as of 12-31-1920."

Exhibit 18 (Barrow): Fourth Annual Report of the Board of State affairs of the State of Louisiana showing assessment of Brimstone Railroad and Canal Company for the year 1920, as $345,542.00

[fol. 834] Exhibit 19 (Barrow): Showing the valuation for assessment purposes placed on the property of the Brimstone Railroad and Canal Company for the year 1921 as $425,323.00.

Exhibit 20 (Fallon): Freight index to freight tariffs, Circulars, Classifications, and classification exceptions as published by or in effect via Brimstone Railroad and Canal Company.

Exhibit 21 (Fallon): Local and proportional freight tariff No. 5-D, applying on commodities between stations on Brimstone Railroad and Canal Company.

Exhibit 22 (Fallon): Letter from United States Railroad Administration to the Brimstone Railroad and Canal Company approving the following allowances:

"Mr. Chambers' office has approved the following allowances applicable on state and interstate traffic:

Brick	2¢ per 100 lbs.
Cement	2½¢ " " "
Coal	2¢ " " "
Fuel Oil	1¢ " " "
Lumber	2¢ " " "
Stone	2¢ " " "

Sulphur:

When destined Port Arthur, Sabine or Galveston, Tex., New Orleans, Gretna, or Algiers, La., for Coastwise movement or export	20¢ per gross ton
When destined points other than those shown above	2½¢ per 100 lbs.
All other carload traffic	3¢ " " "
Merchandise, L. C. L.	10¢ " " "

Sawdust:

Powell Lbr. Co. mill, La. to Sulphur Mine, La., $12.50 per car, to divide 5% to Southern Pacific and 50% to Brimstone R. R. & Canal Co.

Logs: Brimstone Junction and Sulphur Mine, La., to Westlake, La. $3.75 per car. (1)

(1) Brimstone Railroad & Canal Co. proportion.

It should be understood that the three cent allowance applicable on all other carload traffic is not to be applied on any low rated commodities which are not now moving

but might move in the future, or in connection with rates similar to those referred to above applicable on sawdust and logs. You will recall we had an understanding to this effect at the time you were here."

Exhibit 23 (Fallon): Statement of divisions allowed certain short line railroads in the State of Louisiana.

Exhibit Number Blank showing shipments of sulphur [fol. 835] and fuel oil, both to and from the Union Sulphur Company, by tons and cars, both light and loaded, for the first six months of 1921, via Brimstone and Lockport Junctions.

Exhibit Number Blank (2 pages). Comparison of the Divisions received by Brimstone Railroad and Canal Company prior to April 1, 1919, effective April 1, 1919, also effective August 26, 1920.

The following testimony was introduced concerning the following Exhibits at Memphis, Tennessee, on November 14th and 15th, 1922.

Exhibit 24 (Bacon): Explanation of the method and formula in the ascertainment of operating costs of the Brimstone Railroad and Canal Company in handling of its business in common carrier service to and from its connection with the Southern Pacific Company, and the Kansas City Southern Railway Company.

Exhibit 25 (Bacon): Map showing tracks of the Brimstone Railroad and Canal Company, and tracks of the Union Sulphur Company used by the Brimstone in the common carrier service; also the zones into which these tracks were divided for purpose of test May 26th to June 1, 1922, inclusive.

Exhibit 26 (Bacon): Statement showing average time consumed by Engine crews in handling a car in each movement zone for test period May 26th to June 1, 1922, inclusive.

Exhibit 27 (Bacon): Statement showing detail of operating expenses and adjustments on which cost study during the test period May 26 to June 1, 1922, inclusive, was based.

Exhibit 28 (Bacon): Statement showing cost per engine hour during the test period May 26 to June 1, 1922, inclusive.

Exhibit 29 (Bacon): Statement showing return to which the Brimstone Railroad & Canal Company is entitled on

property held for and used in the service of transportation for the public generally; also statements showing in detail cost of reproduction new as of December 31, 1921, of property of the Brimstone Railroad & Canal Company, and property of the Union Sulphur Company used jointly by the Brimstone Railroad & Canal Company in its common carrier service.

Exhibit 30 (Bacon): Recapitulation of study of operating costs, May 26 to June 1, 1922, inclusive, showing separately the cost of handling interchanged business with the Southern Pacific Company and the Kansas City Southern Railway Company.

Exhibit 31 (Bacon): Exhibit showing cost of interchanging cars with the Southern Pacific Company and the Kansas City Southern Railway Company, based on time study as to engine hours and operating costs, taxes and adjustments for the year 1921, equated to the test period, as de- [fol. 836] veloped in test period May 26 to June 1, 1922, but number of loaded cars handled based on average number of cars handled per year for the five years ended December 31, 1917, 1918, 1919, 1920 and 1921; the number of cars handled during the year 1921 and the number of cars handled during the period January to May, 1922, inclusive, equated in each instance to a seven days' period.

Exhibit 32 (Bacon): Statement showing cost of interchanging cars with the Southern Pacific Company and The Kansas City Southern Railway Company based on time study as to engine hours and number of cars handled as developed during test period May 26 to June 1, 1922; also as to taxes for the year 1921 and adjustments, but audited operating costs based on the average yearly operating expenses for the five years ended December 31, 1917, 1918, 1919, 1920 and 1921.

Exhibit 33 (Druschke): Statement showing results of cost to the Brimstone Railroad and Canal Company, if diversions of traffic should occur, detailing the *salt* by stages of 25 cars, bringing out the cost per car at both junctions.

Exhibit 34 (Lallande): Table showing distance from representative points on Louisiana Pacific Railway to junctions with Southern Pacific or Gulf Coast Lines.

Exhibit 35 (Lallande): Table showing distances from points on the Texas Short Line Railroad to Junctions with connecting lines and divisions allowed via such Junctions.

Exhibit 36 (Lallande): Statement showing junctions of the Sugarland Railway with connecting lines; also mileage from representative points on Sugarland Railway to such junctions.

Exhibit 37 (Lallande): Distances from points on Red River and Gulf Railroad to junctions with connecting lines.

Exhibit 38 (Elmore): Summary for calendar year 1921 of Railway operating expenses, railway tax accruals, and adjustments previously referred to, made to cover services and the use of tracks and other facilities furnished to the Brimstone by the Union Sulphur Company, and how these several expenses are equated to the seven day test period, and the equated amounts thereafter separated and allocated to the Common Zone, Southern Pacific Zone, Kansas City Southern Zone, and to expenses common to the three zones.

Exhibit 39: (Elmore) Statement consisting of three pages in full, as follows:

"Before summarizing the various elements making up the engine hour cost in the three zones, it is necessary to show the manner in which the return on investment is divided between these zones. The return on investment in road and equipment other than freight train cars is divided between the zones in the same proportion as shown in the respondents' cost study Exhibit No. 29. The return on investment in freight train cars is allocated, for the reason heretofore stated, to the Southern Pacific zone after first deducting therefrom the net credits for the rental of these cars over and above the debits for the per diem rental of foreign cars.

[fol. 837] Investment in Road, Including General Expenditures

Road	$126,490.26
General Expenditures .	85.50
	126,575.76
Less accrued Depreciation—Road	21,330.80
Net amount for Road and General Expenditures	$105,244.96
5¾% Return on above	6,051.59
Above Return equated to Test Period	116.06

The above amount of equated return is allocated to Zones, as follows:	
To Common Zone	$42.13
To Southern Pacific Zone	4.76
To Kansas City Southern Zone	69.17
	$116.06

Investment in Equipment

Equipment	$392,616.68
Less Accrued Depreciation—Equipment	91,986.42
Net amount for equipment	300,630.26
5¾% return on above	17,286.24
Above return equated to Test Period	331.51

The above amount of return equated to the Test Period is divided between steam locomotives and Freight Train Cars as follows:

Steam Locomotives	$67.96
Freight Train Cars	263.55
	331.51

The allocation to zones of the return on investment in equipment equated to the Test Period is shown below:

The return on investment in steam locomotives, equated to the Test Period, is apportioned to zones on the basis of respective engine hours during the Test Period, as follows:

To Common Zone	$52.13
To Southern Pacific Zone	8.80
To Kansas City Southern Zone	6.93
	$67.96

The return on investment in freight train cars, equated to Test Period, less net credits for rental of cars over and above per diem paid, equated to the Test Period, is assigned as follows:

Return on Investment in freight train cars equated to Test Period	$263.55
Less net credit for rental of equipment ($9,551.80) equated to Test Period	182 42
Net amount allocated to Southern Pacific Zone	81 13

Investment in Materials and Supplies

Materials and Supplies	$3,794 87
6¼% return on above amount	218 20
Amount of above return equated to Test Period	4 18

[fol. 838] Amount of return on investment in materials and supplies, equated to Test Period, is allocated to zones as follows:

To Common Zone	84 18

Summary of Return on Investment in Road and Equipment and Materials and Supplies, Equated to Test Period and Allocated to Zones

	Amounts allocated to zones		
	Common zone	Southern Pacific zone	Kansas City Southern zone
Road (including General Expenditures)	$42 13	$4 76	$09 17
Equipment—Steam Locomotives	32 13	8 90	6 93
" Freight Train Cars		81 13	
Materials and Supplies	4 18		
	$98 44	$94 79	$76 10

The statement which follows contains a summary of the total engine hours in the three zones during the test period excluding time worked by Sulphur Company engine, and of the various elements making up the total costs in each

zone, from which factors are derived the average cost per engine hour in each zone and the average for all zones. This summary is made in the same detail as the Statement shown in Cost Study Exhibit No. 28, in order to afford a comparison between the respondents' costs and the revised costs as heretofore derived in the preceding pages. The high cost per engine hour derived for maintenance of freight train cars, as well as the investment in these cars, wholly to the Southern Pacific Zone. The repairs, depreciation and retirement charges for these cars, which are very large, make up about 74% of the total engine hour cost in the Southern Pacific Zone.

Statement Showing Number of Engine Hours Worked during Test Period; the Allocation of Operating Expenses, Taxes, and Adjustments, and Return on Investment, for the Year Ended December 31, 1921, Equated to the Test Period, to the Three Zones into which the Brimstone Railroad & Canal Co. was Divided for the Purpose of the Cost Study, and the Cost Per Engine Hour in Each Zone.

[fol. 839]

	Common zone		S/n Pac zone		K C S zone		Total all zones	
	Time		Time		Time		Time	
	Hrs	Min	Hrs	Min	Hrs	Min	Hrs	Min
Number Engine Hours worked during Test Period: Brimstone R. R. & C. Co. Engine only	36	51	6	17	4	52	48	0
Operating expenses, including taxes and adjustments (Equated) allocated as common to all three zones								$1,379 60
Cost per engine hour of expenses allocated as common to all three zones								28 742
Apportionment of Operating Expenses, taxes and adjustments (Equated) allocated as common to all three zones, to each zone on basis of number of engine hours worked in each zone	$1,058 15		$180 73		$140 72		$1,379 60	
Operating expenses, taxes and adjustments (Equated) allocated directly to each zone	171 26		1,253 37		288 75		1,713 38	
Total operating expenses, taxes and adjustments equated to the test period	$1,229 41		$1,434 10		$429 47		$3,092 98	
Cost per engine hour for each zone	$33 3625		$228 24		$88 2466		$64 4371	

Statement Showing Number of Engine Hours Worked During Test Period, etc.—Continued

	Common zone		Sea Pac. zone		K. C. S. zone		Total all zones	
	Time		Time		Time		Time	
	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.
Total Operating expenses, including taxes, adjustments and return on investment:								
Total Operating Expenses as above	1,229	41	1,434	10	429	47	3,092	98
Return on investment (less net credits for rental of equipment in excess of debits)	98	41	94	79	76	10	269	33
Total	$1,327	85	$1,528	89	$505	57	$3,362	31
Total Cost per engine hour for each zone (including return on investment)	$36	0339	$243	3376	$103	8835	$70	0481

Exhibit filed 12 8 22 after the Memphis hearing at the request of Examiner Keene consisting of four pages showing traffic handled during the year 1921, by the Brimstone Railroad and Canal Company, separated as between inbound and outbound movements.

Exhibit filed 12 8 22 after the Memphis hearing at the request of Examiner Keene consisting of 26 pages consist-
[fol. 840] ing of daily reports showing activities of the Brimstone Railway and Canal Company engines for the cost study period from May 26th to June 1, 1922, inclusive.

Exhibit filed 12 8 22 after the Memphis hearing at the request of Examiner, as follows:

Cash balances on hand at following periods.

June 30, 1914	$19,911 75
" 1915	4,292 36
" 1916	14,874 40
" 1917	7,312 63
" 1918	21,225 38
" 1919	31,614 12
" 1920	106,585 72
" 1921	14,927 43
" 1922	24,294 21
December 31, 1914	11,156 35
" 1915	8,635 09
" 1916	15,963 53
" 1917	6,619 63
" 1918	41,908 54
" 1919	53,389 32
" 1920	39,314 17
" 1921	18,298 84
"	

Materials & Supplies

Cash balance on hand December 31, 1917	$4,656 92
Cash balance on hand December 31, 1918	25,617 89
Cash balance on hand December 31, 1919	10,076 96
Cash balance on hand December 31, 1920	3,794 87
Cash balance on hand December 31, 1921	

Exhibit filed 12 8 22 after the Memphis hearing at the request of the Examiner showing cost as developed by

study made May 26 to June 1, 1922, inclusive, to the Brimstone Railroad and Canal Company for handling its interchange business with the Southern Pacific Company and the Kansas City Southern Railway Company, except return on investment based on cost of reproduction new, December 31, 1921, also based on cost of reproduction new less depreciation December 31, 1921.

[fol. 841] Testimony was adduced concerning the following exhibits at the hearing held at New Orleans, Louisiana, on May 4th and 5th, 1925:

Exhibit A 1 (Elmore): Map of the Brimstone Railroad and Canal Company used in the Commission's cost study based upon the test period May 21st to May 27, 1924, inclusive.

Exhibit A 2 (Elmore): Detail record of seven day test conducted May 21 to May 27, 1924, inclusive, of the work performed by locomotives of the Brimstone Railroad & Canal Company, showing time consumed in each operation and number of cars handled, with summaries of results showing total time consumed in each movement zone, number of loaded cars handled, and average time per loaded car consumed in each zone and in interchange with connecting carriers.

Exhibit A 3 (Elmore): Showing operating revenues and expenses of the Brimstone Railroad & Canal Company for calendar years 1921, 1922 and 1923, as shown by the carrier's books of account.

Exhibit A 4 (Elmore): Consisting of fifty eight sheets divided into two parts:

Part 1: Statement showing operating expenses, taxes, joint facility and equipment rents for calendar year 1923, as they appear on the books of the Brimstone Railroad and Canal Company, and the adjustment of these expenses made to reflect the reasonable and necessary cost of operation in that year, including the cost of intraplant switching; investment in road and equipment, together with materials and supplies, and cash, as of December 31, 1923, as they appear on the carrier's books, and certain minor additions thereto made necessary by the adjustment of operating

expenses; interest computed at 5½ per cent on investment including therewith materials and supplies and cash; accrued depreciation on road and equipment; summary of total reasonable and necessary cost of operation in 1923, including intraplant switching for Union Sulphur Company, based on expenses as adjusted, and including interest on investment.

Part 2: Statement consisting of the separation of the total reasonable and necessary cost of operation in 1923, between common carrier service and intraplant switching, embracing formula for segregating the cost of intraplant switching, factors used in making such segregation, and summary of results.

Exhibit A-5 (Elmore): Statement consisting of general and Traffic expenses for various Class II roads (industrial) for 1923.

Exhibit A-6 (Elmore): Statement showing number of loaded cars interchanged by Brimstone Railroad & Canal Company with connecting carriers in different periods.

Exhibit A-7 (Elmore): Statement showing (a) hours of service of enginemen and trainmen during calendar years, 1921, 1922, and 1923, (b) Revenue traffic carried during calendar years 1921, 1922 and 1923, (c) average engine time consumed per loaded car handled during calendar years 1921, 1922 and 1923.

Exhibit A-8 (Elmore): Statement showing amount and cost of fuel oil consumed by locomotives of the Brimstone Railroad and Canal Company during calendar years 1921, 1922 and 1923.

[fol. 842] Exhibit A-9 (Elmore): Statement showing data relating to freight train cars owned by Brimstone Railroad and Canal Company, calendar year 1923.

Exhibit A-10 (Elmore): Comparison of Switching tests of May 26 to June 1, 1922, inclusive, and May 21 to May 27, 1924, inclusive, showing allocation of locomotive time to Carrier service made in the cost studies of the Brimstone Railroad & Canal Company, also showing allocation of locomotive time to carrier transportation service in test

of May 21 to May 27, 1924, inclusive made by representatives of Interstate Commerce Commission.

Exhibit A-11 (Bacon): Detail record of seven day test conducted May 21 to May 27, 1924, inclusive, of the work performed by locomotives of the Brimstone Railroad & Canal Company, showing time consumed in each operation and number of cars handled, and summaries of results showing total time consumed in each movement zone, number of loaded cars handled, and average time per loaded car consumed in each zone and in interchange with connecting carriers.

Exhibit A-12 (Bacon): Statement showing value of the Brimstone Railroad and Canal Company based on cost of reproduction new, plus working capital material and supplies and plus going concern value.

Exhibit A-13 (Bacon): This exhibit consists of two parts and thirty four pages, as follows:

Part 1: Operating expenses, taxes, joint facility and equipment rents for calendar year, 1923, as they appear on the books of the Brimstone Railroad & Canal Company and the adjustment of these expenses, which, in the opinion of the Brimstone Railroad & Canal Company, should be made to reflect the reasonable and necessary cost of operation in that year, excluding the cost of intraplant switching; amortization of investment in road accounts, return on investment in road and equipment based on cost of reproduction new as of December 31, 1923, plus materials and supplies and working capital and going concern value as of that date; return on investment in road and equipment based on cost of reproduction new, less depreciation as of December 31, 1923, plus materials and supplies and working capital and going concern value as of that date; Summary of total reasonable and necessary cost of operation in 1923 including intraplant switching for Union Sulphur Company, based on expenses as above adjusted including Amortization Fund for investment in road accounts and interest on investment.

Part 2: Separation of total reasonable and necessary cost of operation in 1923, between common carrier service and intraplant switching, embracing formula for segregat

ing the cost of intraplant switching, factors used in making such segregation, and summary of results.

Exhibit A-14: Statement showing number of loaded cars interchanged by Brimstone Railroad & Canal Company with connecting carriers in different periods; summary of cost common carrier operation in 1923, and average cost per loaded car interchanged; the approximate cost of interchange with Southern Pacific and Kansas City Southern connections.

Amended Return of the Brimstone Railroad and Canal Company to the Interstate Commerce Commission under provisions of Section 15a in the matter of recovery and [fol. 842a] payment of excess Railway operating income for the period of March 1, 1920 to December 31, 1920;

Report of the Brimstone Railroad and Canal Company in the matter of the recovery and payment of excess railway operating income under the provisions of Section 15a of the Interstate Commerce Act for the year ended December 31, 1921;

Report of the Brimstone Railroad and Canal Company in the matter of the recovery and payment of excess railway operating income under the provisions of Section 15a of the Interstate Commerce Act for the year ended December 31, 1922;

Report of the Brimstone Railroad and Canal Company in the matter of the recovery and payment of excess railway operating income under the provisions of Section 15a of the Interstate Commerce Act for the year ended December 31, 1923.

[File endorsement omitted.]

[fol. 843] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Statement showing Division Sheets, local tariff and index to tariffs in respect of which the Brimstone Railroad and Canal Company is an initial or delivering carrier, filed by the latter in compliance with the questionaire issued in the Commission proceeding entitled Divisions of Brimstone Railroad and Canal Company, Docket No. 12869. Filed November 19, 1926.

Exhibit E to Questionaire—Consists of 2 indices showing the effective date and, where cancelled, the cancellation date of the division sheets included in Exhibit F following, the one index relating to division sheets on traffic routed over the Kansas City Southern and the Texarkana & Fort Smith Railways, hereinafter referred to as Port Arthur Route or K. C. S., and the other index relating to division sheets on traffic routed over the Morgans' Louisiana & Texas Railroad & Steamship Company, Louisiana Western Railroad Company, hereinafter referred to as the S. P.

Exhibit F to Questionaire (280 sheets)—Consists of the divisions sheets, supplements and amendments thereto, issued between May 1, 1886, and May 1, 1921, on all classes and commodities moving interstate or intrastate or for export from and to points on the B. R. R. & C. Co., routed via the K. C. S., and the S. P., as follows:

1 Sheet—Port Arthur Route Division Sheet 212 E, effective August 26, 1919.

3 Sheets—Supplement No. 1 to Port Arthur Route Division Sheet 212 E, effective May 1st, 1921.

1 Sheet—Amendment No. 3 to Division Basis No. 1 of K. C. S., Tariff 1918, as amended. No date shown.

4 Sheets—Arbitraries allowed the B. R. R. & Co., by the K. C. S., on Seaboard traffic, grain from Texas Stations and sulphur to defined points. No date shown.

1 Sheet—K. C. S., Divisional Basis No. 1, effective May 1st, 1886.

1 Sheet—Amendment No. 5 to Divisional Basis No. 1, effective August 1, 1907.

1 Sheet—Same as above.

1 Sheet—Amendment No. 4 to K. C. S., Divisional Basis No. 1, effective as shown in Tariff 1819 as amended.

1 Sheet—Amendment No. 6 to Divisional Basis No. 1, effective with Tariff 2178.

[fol. 844] 5 Sheets—K. C. S., Division Basis No. 1-A, effective October 25, 1910.

5 Sheets—K. C. S., Division Basis No. 1 B, effective January 15, 1912.

1 Sheet—Supplement No. 1 to K. C. S., Division Basis No. 1-A, effective October 23, 1910.

1 Sheet—Supplement No. 5 to K. C. S., Division Sheet No. 1 A, effective January 15, 1912.

1 Sheet—Supplement No. 29 to K. C. S., Divisional Basis No. 1 B.

1 Sheet—Supplement No. 28 to K. C. S., Divisional Basis No. 1 B, effective December 4, 1916.

1 Sheet—Supplement No. 26 to K. C. S., Divisional Basis No. 1 B, effective December 23, 1916.

1 Sheet—Supplement No. 25 to K. C. S., Divisional Basis No. 1 B, effective October 2, 1916.

1 Sheet—Supplement No. 24 to K. C. S., Divisional Basis No. 1 B, effective November 3, 1916.

1 Sheet—Supplement No. 23 to K. C. S., Divisional Basis No. 1 B, effective September 28, 1916.

1 Sheet—Supplement No. 22 to K. C. S., Divisional Basis No. 1 B, effective July 6, 1916.

1 Sheet—Supplement No. 21 to K. C. S., Divisional Basis No. 1 B, effective May 25, 1916.

1 Sheet—Supplement No. 20 to K. C. S., Divisional Basis No. 1 B, effective June 19, 1916.

1 Sheet—Supplement No. 19 to K. C. S., Divisional Basis No. 1 B, effective May 1, 1916.

1 Sheet—Supplement No. 18 to K. C. S., Divisional Basis No. 1 B, effective May 1, 1916.

[fol. 845] 1 Sheet—Supplement No. 17 to K. C. S., Divisional Basis No. 1 B, effective April 1, 1916.

1 Sheet—Supplement No. 16 to K. C. S., Divisional Basis No. 1 B, effective April 1, 1916.

1 Sheet—Supplement No. 14 to K. C. S., Divisional Basis No. 1 B, effective August 5, 1915.

1 Sheet—Supplement No. 13 to K. C. S., Divisional Basis No. 1 B, effective March 30, 1915.

1 Sheet—Supplement No. 12 to K. C. S., Divisional Basis No. 1-B, effective April 15, 1915.

1 Sheet—Supplement No. 11 to K. C. S., Divisional Basis No. 1-B, effective December 11, 1914.

1 Sheet—Supplement No. 10 to K. C. S., Divisional Basis No. 1-B, effective November 20, 1914.

1 Sheet—Supplement No. 9 to K. C. S., Divisional Basis No. 1-B, effective July 15, 1914.

1 Sheet—Supplement No. 8 to K. C. S., Divisional Basis No. 1-B, effective May 13, 1914.

1 Sheet—Supplement No. 7 to K. C. S., Divisional Basis No. 1-B, effective May 13, 1914.

1 Sheet—Supplement No. 6 to K. C. S., Divisional Basis No. 1-B, effective March 6, 1914.

1 Sheet—Supplement No. 5 to K. C. S., Divisional Basis No. 1-B, effective October 21, 1913.

1 Sheet—Supplement No. 4 to K. C. S., Divisional Basis No. 1-B, effective June 3, 1913.

1 Sheet—K. C. S., Division Sheet No. 15-D, effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 7-A, effective July 1, 1918.

[fol. 846] 1 Sheet—K. C. S., Division Sheet No. 18, effective January 7, 1911.

1 Sheet—Supplement No. 1 to K. C. S., Division Sheet No. 18, effective November 1, 1913.

1 Sheet—Supplement No. 3 to K. C. S., Divisional Basis No. 1-B, effective January 15, 1912.

1 Sheet—Supplement No. 2 to K. C. S., Divisional Basis No. 1-B, effective June 3, 1913.

1 Sheet—K. C. S., Division Sheet No. 15-C, effective July 1, 1918.

1 Sheet—Supplement No. 1 to K. C. S., Divisional Basis No. 1-B, effective January 15, 1912.

1 Sheet—K. C. S., Division Sheet No. 15-D, effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 7-A effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 18, effective January 7, 1911.

1 Sheet—Supplement No. 1 to K. C. S., Division Sheet No. 18, effective November 1, 1913.

1 Sheet—K. C. S., Division Sheet No. 18-G, effective August 26, 1920.

1 Sheet—K. C. S., Division Sheet No. 22-A, effective August 26, 1920.

1 Sheet—K. C. S. Division Sheet No. 6, effective July 7, 1921.

1 Sheet—K. C. S. Division Sheet No. 2, effective May 14, 1909.

1 Sheet—K. C. S., Division Sheet No. 2-A effective July 8, 1909.

1 Sheet—K. C. S., Division Sheet No. 2-B, effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 39-A, effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 39, effective September 28, 1914.

1 Sheet—K. C. S., Division Sheet No. 9, effective February 2, 1909.

[fol. 847] 1 Sheet—K. C. S., Division Sheet No. 9-B, effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 2-A, effective March 15, 1915.

1 Sheet—K. C. S., Division Sheet No. 2-B, effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 2-A to S. W. L. Tariff 25, effective with tariff.

1 Sheet—K. C. S., Division Sheet No. 1-B, effective October 10, 1916.

1 Sheet—K. C. S., Division Sheet No. 21-A, effective July 1, 1918.

1 Sheet—K. C. S. Division Sheet No. 2-A, effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 3-B, effective October 10, 1916.

2 Sheets—K. C. S., Division Sheet No. 8-B, effective October, 10, 1916.

1 Sheet—K. C. S., Division Sheet No. 9-A, effective October 10, 1916.

1 Sheet—K. C. S., Division Sheet No. 11-A, effective October 10, 1916.

1 Sheet—K. C. S., Division Sheet No. 10-A, effective October 10, 1916.

1 Sheet—K. C. S., Division Sheet No. 3, effective December 31, 1908.

1 Sheet—K. C. S., Division Sheet No. 2, effective December 31, 1908.

1 Sheet—K. C. S., Division Sheet No. 1, effective October 26, 1908.

1 Sheet—K. C. S., Division Sheet No. 1, effective December 1, 1912.

1 Sheet—K. C. S., Division Sheet No. 1-A, effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 1-B, effective July 1, 1918.

1 Sheet—K. C. S., Division Sheet No. 1-A, effective June 8, 1908.

1 Sheet—K. C. S., Division Sheet No. 1-B, effective March 1 1917.

1 Sheet—K. C. S., Division Sheet No. 1-C, effective July 1, 1918.

[fol. 848] 1 Sheet—K. C. S., Division Sheet No. 4, effective October 1, 1917.

5 Sheets—K. C. S., Percentage Sheet No. 454, effective March 3, 1917.

3 Sheets—St. L. S. W., Percentage No. 2320, effective October 22, 1917.

2 Sheets—Supplement No. 10 to K. C. S., Percentage Sheet No. 454, effective September 9, 1917.

2 Sheets—Supplement No. 11 to K. C. S., Percentage Sheet No. 454, effective July 28, 1917.

2 Sheets—Supplement No. 9 to K. C. S., Percentage Sheet No. 454, effective May 31, 1917.

2 Sheets—Supplement No. 8 to K. C. S., Percentage Sheet No. 454, effective April 18, 1917.

2 Sheets—Supplement No. 6 to K. C. S., Percentage Sheet No. 454, effective May 17, 1917.

2 Sheets—Supplement No. 7 to K. C. S., Percentage Sheet No. 454, effective April 9, 1917.

2 Sheets—Supplement No. 5 to K. C. S., Percentage Sheet No. 454, effective May 17, 1917.

2 Sheets—Supplement No. 4 to K. C. S., Percentage Sheet No. 454, effective May 17, 1917.

2 Sheets—Supplement No. 3 to K. C. S., Percentage Sheet No. 454, effective April 27, 1917.

2 Sheets—Supplement No. 2 to K. C. S., Percentage Sheet No. 454, effective April 7, 1917.

2 Sheets—Supplement No. 1 to K. C. S., Percentage Sheet No. 454, effective April 2, 1917.

5 Sheets—Missouri Pacific Division Basis No. 5800 to Freight Tariff of Joint Rates, K. C. S., No. 254 series and Mo. P. 2380 series, effective April 1, 1916.

[fol. 849] 5 Sheets—K. C. S., Percentage Sheet No. 454-A, effective July 1, 1918.

1 Sheet—Supplement No. 1 to Percentage Sheet No. 454-A, effective April 1, 1919.

5 Sheets—K. C. S., Divisional Basis No. 1, effective May 1, 1906.

1 Sheet—Letter to Mr. E. E. Smythe, G. F. A., K. C. S. Ry., Kansas City, Mo., acknowledging receipt of his letter of March 15th.

1 Sheet—Letter from Mr. E. E. Smythe, G. F. A., K. C. S. Ry., Kansas City, Mo., with reference to providing for a division of 2½ cents per 100 pounds for the B. R. R. & C. Co., on sulphur destined Coffeeville, Kansas.

1 Sheet—Amendment No. 3 to Divisional Basis No. 1, effective as shown in Tariff 1918.

1 Sheet—Amendment No. 4 to Divisional Basis No. 1, effective with tariff.

1 Sheet—Amendment No. 7 to Divisional Basis No. 1, effective with tariff.

1 Sheet—Amendment No. 8 to Divisional Basis No. 1, effective with tariff.

1 Sheet—Amendment No. 6 to Divisional Basis No. 1, effective August 1, 1907.

6 Sheets—S. P. Division Sheet No. 1463, effective January 15, 1907.

1 Sheet—S. P. Division Sheet No. 1463-A, effective January 11, 1909.

[fol. 850] 2 Sheets—Supplement No. 25 to S. P. Division Sheet 1463-A, effective June 24, 1909.

2 Sheets—Supplement No. 24 to S. P. Division Sheet 1463-A, effective June 15, 1909.

2 Sheets—Supplement No. 22 to S. P. Division Sheet 1463-A, effective March 17, 1909.

2 Sheets—Supplement No. 20 to S. P. Division Sheet 1463-A, effective August 12, 1908.

1 Sheet—Supplement No. 19 to S. P. Division Sheet 1463-A, effective August 12, 1908.

1 Sheet—Supplement No. 17 to S. P. Division Sheet 1463-A, effective April 10, 1908.

2 Sheets—Supplement No. 16 to S. P. Division Sheet 1463-A, effective January 31, 1908.

1 Sheet—Supplement No. 11 to S. P. Division Sheet No. 1453-A, effective November 20, 1907.

3 Sheets—Supplement No. 9 to S. P. Division Sheet No. 1453-A, effective August 29, 1907.

2 Sheets—Supplement No. 8 to S. P. Division Sheet No. 1453-A, effective August 30, 1907.

2 Sheets—Supplement No. 7 to S. P. Division Sheet No. 1453-A, effective August 12, 1907.

3 Sheets—S. P. Division Sheet No. 1463-B, effective August 10, 1910.

3 Sheets—S. P. Division Sheet No. 2123, effective November 8, 1910.

1 Sheet—Supplement No. 26 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 25 to S. P. Division Sheet No. 2123, effective with rates.

[fol. 851] 1 Sheet—Supplement No. 23 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 22 to S. P. Division Sheet No. 2123, effective with rates.

4 Sheets—Supplement No. 21 to S. P. Division Sheet No. 2123, effective with rates.

3 Sheets—Supplement No. 18 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 20 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 17 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 16 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 15 to S. P. Division Sheet No. 2123, effective with rates.

2 Sheets—Supplement No. 13 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 12 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 11 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 10 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 9 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 9 to S. P. Division Sheet No. 2123, effective with rates.

[fol. 852] 1 Sheet—Supplement No. 8 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 7 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 5 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 4 to S. P. Division Sheet No. 2123, effective with rates.

1 Sheet—Supplement No. 2 to S. P. Division Sheet No. 2123, effective with rates.

3 Sheets—S. P. Division Sheet No. 2868, effective March 15, 1917.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 2123, effective January 1, 1911.

1 Sheet—Supplement No. 3 to L. W. Division Sheet No. 2868, effective with rates.

1 Sheet—Supplement No. 2 to L. W. Division Sheet No. 2868, effective with rates.

4 Sheets—S. P. Division Sheet No. 2868-A, effective July 1, 1918.

2 Sheets—Supplement No. 1 to S. P. Division Sheet No. 2123-A, effective April 11, 1918.

2 Sheets—S. P. Division Sheet No. 2897, effective April 1, 1919.

2 Sheets—S. P. Division Sheet No. 1871, effective May 7, 1908.

1 Sheet—S. P. Division Sheet No. 2897-A, effective August 26, 1920.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 1871, effective June 18, 1908.

1 Sheet—S. P. Division Sheet No. 1871-E, effective January 1, 1911.

1 Sheet—S. P. Division Sheet No. 2126, effective November 15, 1910.

1 Sheet—S. P. Division Sheet No. 2126 B, effective with tariff.

[fol. 853] 1 Sheet—S. P. Division Sheet No. 2126 E, effective July 19, 1916.

1 Sheet—S. P. Division Sheet No. 2126 G, effective with rates.

1 Sheet—S. P. Division Sheet No. 2126 K, effective July 1, 1918.

1 Sheet—S. P. Division Sheet No. 2126 J, effective July 1, 1918.

1 Sheet—S. P. Division Sheet No. 2126 L, effective July 1, 1918.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 2126 L, effective April 1, 1919.

1 Sheet—S. P. Division Sheet No. 1780 E, effective December 8, 1907.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 1780 B, effective July 1, 1908.

1 Sheet—S. P. Division Sheet No. 1780 B, effective October 31, 1912.

1 Sheet—S. P. Division Sheet No. 1780 H, effective July 1, 1918.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 1780 H, effective April 1, 1919.

1 Sheet—S. P. Division Sheet No. 2562, effective September 15, 1924.

1 Sheet—S. P. Division Sheet No. 2562 A, effective July 1, 1918.

1 Sheet—S. P. Division Sheet No. 2933, effective December 1, 1920.

1 Sheet—S. P. Division Sheet No. 2894, effective May 5, 1919.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 2562 A, effective April 1, 1919.

1 Sheet—S. P. Division Sheet No. 2275 G, effective February 2, 1907.

1 Sheet—S. P. Division Sheet No. 1733 C, effective January 23, 1908.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 1736 C, effective April 12, 1912.

1 Sheet—S. P. Division Sheet No. 1825, effective January 8, 1908.

1 Sheet—S. P. Division Sheet No. 2843-A, effective July 1, 1918.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 2843-A, effective April 1, 1919.

[fol. 854] 1 Sheet—S. P. Division Sheet No. 2490, effective January 7, 1915.

2 Sheets—S. P. Division Sheet No. 2898, effective April 1, 1919.

2 Sheets—S. P. Division Sheet No. 2898-A, effective August 26, 1920.

1 Sheet—S. P. Division Sheet No. 2630, effective March 8, 1916.

1 Sheet—S. P. Division Sheet No. 2630-A, effective July 1, 1918.

1 Sheet—S. P. Division Sheet No. 2898-B, effective March 15, 1921.

1 Sheet—S. P. Division Sheet No. 2893, effective March 7, 1919.

1 Sheet—S. P. Division Sheet No. 1797, effective April 31, 1907.

1 Sheet—Supplement No. 3 to S. P. Division Sheet No. 1797, effective April 21, 1908.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 2893, effective April 1, 1919.

1 Sheet—S. P. Percentage Basis No. 360, effective July 6, 1906.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 1797, effective March 4, 1908.

2 Sheets—S. P. Division Sheet No. 1797-A, effective May 27, 1908.

1 Sheet—Supplement No. 4 to S. P. Division Sheet No. 1797-A, effective February 18, 1909.

1 Sheet—Supplement No. 3 to S. P. Division Sheet No. 1797-A, effective January 15, 1909.

1 Sheet—Supplement No. 2 to S. P. Division Sheet No. 1797-A, effective January 12, 1909.

2 Sheets—S. P. Division Sheet No. 1797-B, effective February 14, 1911.

1 Sheet—Supplement No. 7 to S. P. Division Sheet No. 1797-B, effective with rates.

1 Sheet—Supplement No. 6 to S. P. Division Sheet No. 1797-B, effective April 22, 1912.

1 Sheet—Supplement No. 5 to S. P. Division Sheet No. 1797 B, effective April 22, 1912.

[fol. 855] 3 Sheets—S. P. Division Sheet No. 1797 C, effective February 27, 1915.

1 Sheet—Supplement No. 6 to S. P. Division Sheet No. 1797 C, effective October 12, 1916.

1 Sheet—Supplement No. 5 to S. P. Division Sheet No. 1797 C, effective September 27, 1915.

1 Sheet—Supplement No. 4 to S. P. Division Sheet No. 1797 C, effective April 1, 1915.

1 Sheet—Supplement No. 3 to S. P. Division Sheet No. 1797 C, effective February 27, 1915.

3 Sheets—S. P. Division Sheet No. 1797 D, effective July 1, 1918.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 1797 D, effective April 1, 1919.

2 Sheets—S. P. Division Sheet No. 2899, effective April 1, 1919.

2 Sheets—S. P. Division Sheet No. 2899 A, effective August 26, 1920.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 2899 A, effective July 19, 1921.

2 Sheets—S. P. Percentage Basis No. 648 A, effective July 1, 1918.

1 Sheet—Supplement No. 1 to S. P. Percentage Basis No. 648 A, effective April 1, 1919.

26 Sheets—S. P. Division Sheet No. 188 D, effective April 1, 1912.

17 Sheets—Supplement No. 2 to S. P. Division Sheet No. 188 D, effective June 20, 1912.

16 Sheets—S. P. Division Sheet No. 188 E, effective August 1, 1918.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 188 D, effective June 1, 1912.

8 Sheets—Supplement No. 3 to S. P. Division Sheet No. 188 D, effective February 1, 1913.

1 Sheet—Supplement No. 1 to S. P. Division Sheet No. 188 D, effective December 4, 1916.

[fol. 856] 2 Sheets—K. C. S. Division Sheet No. 212 E, effective August 26, 1919.

1 Sheet—Supplement No. 1 to K. C. S. Division Sheet No. 212 E, effective May 1, 1921.

1 Sheet—S. P. Division Sheet No. 2899-A, effective August 26, 1920.

2 Sheets—Supplement No. 1 to S. P. Division Sheet No. 2899-A, effective July 19, 1921.

1 Sheet—S. P. Division Sheet No. 2898-B, effective March 15, 1921.

2 Sheets—S. P. Division Sheet No. 2897-A, effective August 26, 1920.

1 Sheet—K. C. S. Division Sheet No. 4-A, effective July 1, 1918.

1 Sheet—K. C. S. Division Sheet No. 1, effective July 7, 1906.

1 Sheet—K. C. S. Percentage Sheet No. 236-A, effective Febuary 15, 1908.

4 Sheets—K. C. S. Percentage Sheet No. 236-C, effective November 26, 1910.

2 Sheets—Supplement No. 1 to K. C. S. Percentage Sheet No. 236-C, effective October 1, 1911.

1 Sheet—K. C. S. Percentage Sheet No. 212-B, effective May 1, 1914.

1 Sheet—K. C. S. Percentage Sheet No. 212-C, effective July 1, 1918.

6 Sheets—K. C. S. Percentage Sheet No. 212-D, effective April 1, 1919.

None of the Division Sheets contained in Exhibits E or F are published under an Interstate Commerce Commission number.

Exhibit G—Consists of 2 sheets of local and proportional freight Tariff No. 5-D, applying on Commodities between stations on the Brimstone Railroad and Canal Company. Effective March 15, 1921.

Exhibit H—Consists of 1 Sheet showing Statement of Division allowed certain Short Line Railroads in State of Louisiana.

[fols. 857-860] Exhibit I—Consists of 5 sheets of B. R. R. & C. Co. Freight Tariff Index No. 13, to Freight Tariffs, Circulars, Classification, Classification Exceptions, via B. R. R. & C. Co. Issued April 25, 1921.

[fols. 861-867] Citation in usual form, showing service on Blackburn Esterline et al., omitted in printing.

[fol. 868] In United States District Court

Order Further Enlarging the Time for Docketing the Case and Filing the Record—Filed in Supreme Court March 21, 1927

On motion of the Brimstone Railroad & Canal Company, and the United States of America, and on suggesting to the Court that on account of the voluminous record, it has been impossible to complete the narrative of the testimony and the exhibits;

And on further suggesting that it is impossible to complete the record in time to docket the cause and file the transcript with the Clerk of the Supreme Court by March 31st, 1927;

And on further suggesting that the case cannot be reached by the Supreme Court before the October, 1927, Term, and the ends of justice will not suffer from a delay in filing the transcript;

And on further suggesting that in order to submit the narrative form of the evidence to the Court for its approval and complete the record, it will be necessary that a further enlargement of the time for filing the record until May 15th, 1927, be granted;

[fol. 869] It is ordered, That the time within which the transcript in this case shall be returnable to the Supreme Court is hereby further enlarged from the present expiration date of March 31st, 1927, until May 15th, 1927.

R. W. Walker, Circuit Judge. Louis H. Burns, District Judge. Ben C. Dawkins, District Judge.

Dated March 16, 1927.

[fol. 870] Clerk's certificate to foregoing paper omitted in printing.

[fol. 870a] [File endorsement omitted.]

[fol. 871] In Supreme Court of the United States

Statement of Points to be Relied upon, and Designation of Parts of the Record to be Printed—Filed May 9, 1927

To the Clerk of the Supreme Court:

The appellant hereby states the points upon which it relies to be as follows:

1. That the Court which heard the case did not consider or decide the various grounds of attack in plaintiff's bill of complaint, or give any reasons for denying relief as prayed for by appellant, with the exception of two grounds, namely:

(a) That the joint through rates in effect on the Brimstone Railroad were not established "pursuant to an order or finding of the Commission."

(b) The divisions sought to be established were not divisions of joint rates; but were, in fact, proportional rates.

2. That the Interstate Commerce Commission did not investigate or determine the reasonableness or justness of the divisions under consideration, or whether they would be unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the carriers participating therein, and did not give consideration to any fact or circumstance which would entitle one of such carriers to a greater or less proportion than another carrier of the joint rates, as required by Section 15, paragraph (6) of the Interstate Commerce Act.

3. That the Interstate Commerce Commission is without jurisdiction, power or authority to determine or prescribe the divisions to be received by the Brimstone out of joint rates received by it and the several participating carriers, except as between the carriers parties thereto, and except after a hearing and investigation of the operating expenses, taxes and other facts and circumstances connected with the operation of each of the several carriers participating in such joint rates as specifically required by said Section 15, paragraph (6) of said act.

[fol. 872] 4. That the Commission is and was without power or authority to determine or prescribe divisions to be received by the Brimstone out of joint rates received by it, except as between the carriers parties thereto, and except after a hearing and investigation of the operating expenses, taxes and other facts and circumstances connected with the operation of each of the several carriers participating in such joint rates.

5. That the Commission was and is without power and authority to establish any division of joint through rates under Section 15, paragraph (6) of the Interstate Commerce Act, except after it has established joint through rates and charges for the transportation of property as provided in said section and paragraph.

6. That the order dated December 14, 1925, of the Commission fixing divisions for the Brimstone from the date of the order of investigation, retroactively, for a period of more than four years, was made without fixing joint through rates for the Brimstone and its connecting carriers in the manner prescribed by Section 15, paragraph 3, of the Interstate Commerce Act.

7. That the joint through rates in effect on the Brimstone were not "established pursuant to a finding or order of the Commission" in such manner as to authorize and empower the Commission to fix the divisions thereof for the period subsequent to the order of investigation and prior to the effective date of the order of December 14, 1925, fixing the divisions.

8. That there was no evidence before the Commission of the value of the railway property of the Brimstone held for and used in the service of transportation for the years 1924 and 1925.

9. That the divisions prescribed by the Commission in its order of December 14, 1925, failed to allow a fair return upon the fair value of the railway property of the Brimstone held for and used in the service of transportation.

10. That the divisions received by the Brimstone had all been proportionately reduced by reason of Section 15 (a) of the Interstate Commerce Act before collection, as the United States Government, acting through the Interstate

Commerce Commission has appropriated the excess net railway operating income of the Brimstone over six (6) per centum on the value of the carrier's property used in the service of transportation of those years in which an excess net railway operating income was earned.

II. That the order of the Commission of December 14, 1925, if complied with, will result in taking the property of the Brimstone held for and used in the service of transportation, without due process of law, and confiscation thereof, in violation of the Fifth Amendment to the Constitution of the United States, for reasons set forth in VIII, paragraphs (a) and (b) of the assignments of error.

All of which points are raised in detail in assignments of error, and the appellant designates the parts of the record it thinks necessary for the consideration of the Court to be as follows:

[fol. 873] Appellant's Designation for Printing

1. Bill of Complaint, with amendments, and with Exhibit "B" attached. Report of the Interstate Commerce Commission of April 4, 1922, (68 I. C. C. 375).

Exhibit "C" attached. Report of the Interstate Commerce Commission of March 10, 1924, (88 I. C. C. 62).

Exhibit "D" attached. Application for rehearing on Interstate Commerce Commission Report and Order of March 10, 1924.

Exhibit "E" attached. Exception to the Jurisdiction of the Interstate Commerce Commission.

Exhibit "F." Report and order of the Interstate Commerce Commission of December 14, 1925, (104 I. C. C. 415).

2. Answer of the United States.

3. Intervention and answer of the Interstate Commerce Commission.

4. Answer of the Louisiana Western Railroad Company.

5. Opinion of the Court on Application for Preliminary Injunction.

6. Order granting Preliminary Injunction.

7. Opinion of the Court on Final Submission of Case.

8. Final Decree of January 19, 1927.

9. Petition for Appeal.

10. Assignments of Error.
11. Order allowing appeal.
12. Bond on appeal.
13. Order staying enforcement of order of the Interstate Commerce Commission pending appeal.
14. Bond on stay order.
15. Service of citation on appeal on Solicitor General of the United States.
16. Service of citation on appeal on the Interstate Commerce Commission.
17. Service of citation on appeal on Louisiana Western Railroad Company.
18. Service of citation on appeal on Kansas City Southern Railway Company.
19. Order of Investigation of the Interstate Commerce Commission of August 1, 1921.
20. Narrative Form of Evidence before Interstate Commerce Commission.
21. Statement: Re Exhibits.

[fols. 874 & 874a] Service of the within statement and acknowledgment of a copy hereby admitted this 9th day of May, 1927.

Blackburn Esterline, Assistant to the Solicitor General for the United States.

Daniel W. Knowlton, Assistant Chief Counsel for the Interstate Commerce Commission.

22.—The following exhibits, viz:

Exhibit No. 13, (Weaver).
Exhibit No. 14, (Weaver).
Exhibit No. 20, (Fallon).
Exhibit No. 21, (Fallon).
Exhibit No. 23, (Fallon).

Exhibit of two pages, comparison of Divisions Received by the Brimstone Railroad & Canal Company prior to April 1, 1919, effective August 26, 1920.

Exhibit No. 24, (Bacon).
Exhibit No. 25, (Bacon).
Exhibit No. 26, (Bacon).
Exhibit No. 27, (Bacon).
Exhibit No. 28, (Bacon).

Exhibit No. 29, (Bacon).
Exhibit No. 30, (Bacon).
Exhibit filed 12/8/22 after the Memphis hearing at the request of the Examiner showing cost as developed by study made May 26 to June 1, 1922, inclusive, to the Brimstone for handling its interchange business with the Southern Pacific and the Kansas City Southern, with return on investment based on cost of reproduction new as of December 31, 1921, also based on cost of reproduction new less depreciation as of December 31, 1921.
Exhibit A-2, (Elmore).
Exhibit 4-3, (Elmore).
Exhibit A 4, Part I and Part II, (Elmore).
Exhibit A-5, (Elmore).
Exhibit A-6, (Elmore).
Exhibit A-7, (Elmore).
Exhibit A-8, (Elmore).
Exhibit A-9, (Elmore).
Exhibit A-10, (Elmore).
Exhibit A 11, (Bacon).
Exhibit A-12, (Kirkpatrick).
Exhibit A-13, Part I and Part II, (Bacon).
Exhibit A-14, (Bacon).
Exhibit A-16, (Bell).

Amended return of the Brimstone Railroad & Canal Company to the Interstate Commerce Commission in re., Recovery and Payment of Excess Railway Operating Income, for the Period from March 1, 1920 to December 31, 1920.

Report of the Brimstone in re., Recovery and Payment of Excess Railway Operating Income for the Year ended December 31, 1921.

Report of the Brimstone in re., Recovery and Payment of Excess Railway Operating Income for Year ended December 31, 1922.

Report of the Brimstone in re., Recovery and Payment of Excess Railway Operating Income for Year ended December 31, 1923.

23.—Stipulation re: Statement of Evidence.
24.—Plaintiff's Praecipe.
25.—Defendant's (United States) Praecipe.

26.—Order enlarging time for filing record until May 15, 1927.

Brimstone Railroad & Canal Company, by Wylie M. Barrow, Its Duly Authorized Attorney.

[fol. 875] Southern Pacific Lines in Texas and Louisiana. Texas and New Orleans Railroad Company, Louisiana Lines

Denegre, Leovy & Chaffe, General Counsel

In reply please refer to No. —

New Orleans, La., May 6th, 1927.

Mr. Wm. R. Stansbury, Clerk, Supreme Court of the United States, Washington, D. C.

Dear Sir: In the matter of Brimstone Railroad & Canal Company, Appellant, vs. United States of America, et al., Appellees:

We have for acknowledgment a copy of Appellant's statement of points to be relied upon and designation of parts of the record to be printed.

Yours very truly, Denegre, Leovy & Chaffe, Solicitor for Louisiana Western Railroad Company, Appellee.

HMeC: H.

cc: Mr. Wylie M. Barrow, Baton Rouge, La.

[fol. 876] J. D. Wilkinson, W. S. Wilkinson, C. H. Lewis

Wilkinson, Lewis & Wilkinson, Attorneys at Law, Fifteenth Floor Slattery Building, Shreveport, Louisiana

May 7, 1927.

Clerk of the Supreme Court of the United States, Washington, D. C.

Dear Sir: We are today in receipt from W. M. Barrow, Solicitor for Appellant in the case of Brimstone Railroad

& Canal Company, Appellant, vs. United States of America et al., Appellees, No. —— on the docket of your Honorable Court a statement of the points to be relied upon and designation of parts of the record to be printed.

Yours truly, Wilkinson, Lewis & Wilkinson, by J. D. W.

JDW:ZP.

cc Hon. W. M. Barrow, Attorney and Counsellor at Law, Baton Rouge, Louisiana.

[fol. 877] [File endorsement omitted.]

[fol. 878] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION BY APPELLEE OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED—Filed May 14, 1927

To the Clerk:

Appellant having filed its designation of the parts of the record to be printed, the appellees, United States of America and Interstate Commerce Commission, by their respective counsel, further designate for printing as additional parts of the record which they think material and necessary the following matter:

1. Pages (photostat) numbered 805 to 816, inclusive, consisting of twelve (12) sheets containing answers of appellant to questionnaire of the Commission in I. C. C. Docket No. 12,969.

2. Pages (photostat) numbered 817 to 830, inclusive, consisting of exhibits filed in the proceedings before the Commission in I. C. C. Docket No. 12,969, and numbered ten (10), eleven (11), thirty one (31), thirty-two (32), thirty three (33) and thirty-eight (38).

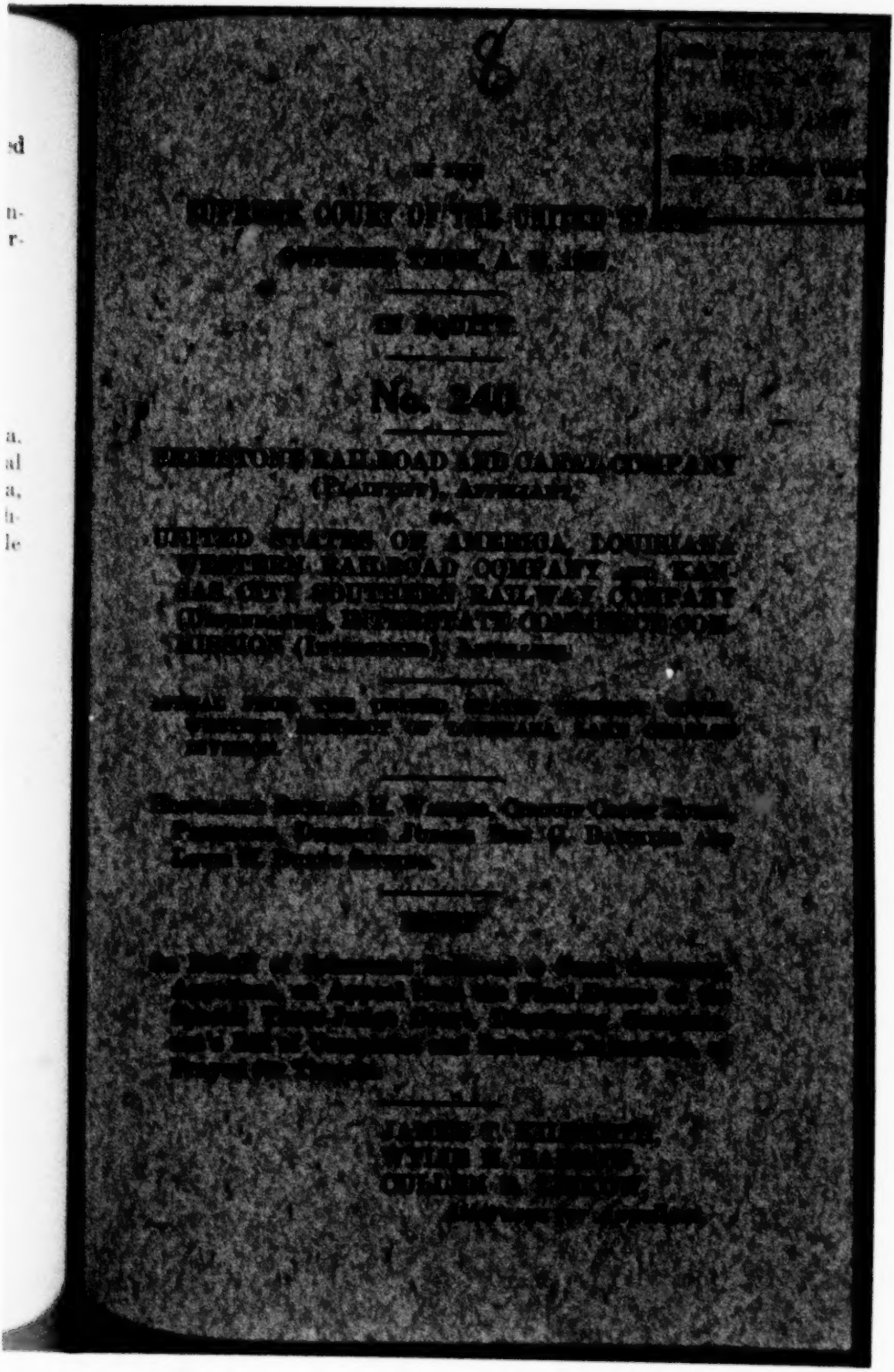
3. Pages 843 to 857, inclusive,—the document styled "Statement Showing Division Sheets," etc.

Blackburn Esterline, Assistant to the Solicitor General. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission.

May 10, 1927.

[fols. 879 & 880] [File endorsement omitted.]

Endorsed on cover: File No. 32,675. W. Louisiana, D. C., U. S. Term No. 240. Brimstone Railroad & Canal Company, appellant, vs. The United States of America, Louisiana Western Railroad Company, Kansas City Southern Railway Company, et al. Filed May 9th, 1927. File No. 32,675.



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1927.

IN EQUITY.

No. 240.

BRIMSTONE RAILROAD AND CANAL COMPANY (PLAINTIFF), APPELLANT,

vs.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY AND KANSAS CITY SOUTHERN RAILWAY COMPANY (DEFENDANTS), INTERSTATE COMMERCE COMMISSION (INTERVENER), APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION.

BRIEF

On Behalf of Brimstone Railroad & Canal Company, Appellant, on Appeal from the Final Decree of the Special Three-Judge Court, Dismissing Complainant's Bill of Complaint and Refusing Injunction, as Prayed for Therein.

Statement of Case.

This case is reported below, under the same title, in 13 Fed. (2d), 914, and 17 Fed. (2d), 165.

In

This appeal is from a final decree entered January 19, 1927 (Record, p. 325), vacating and setting aside a preliminary injunction issued May 31, 1926, and filed June 1, 1926 (Record, p. 143), as prayed for, and dismissing the bill of complaint for want of equity.

This proceeding requires an interpretation of Section 15 of the *Interstate Commerce Act* (41 Stat. L., 484), as amended by the *Transportation Act, 1920*, and involves the validity of orders of the Interstate Commerce Commission (hereinafter referred to as the Commission) entered in I. C. C. Docket 12969, *Divisions Received by the Brimstone Railroad & Canal Company*, fixing divisions of joint through rates to be received by the said Brimstone Railroad & Canal Company (hereinafter referred to as the Brimstone) and applying the divisions *retroactively* to the date of the order of investigation of the Commission.

The facts out of which this litigation arose are as follows:

The Brimstone is a railroad corporation of Louisiana, organized in 1906, which operates approximately 9.07 miles of road as a common carrier of freight. Its road is located in the southwestern part of Louisiana, where connections are made with the Louisiana Western Railroad, at Brimstone Junction, and with the Kansas City Southern Railway, at Mossville. The Brimstone receives and delivers freight traffic from and to its two connections at the points named. Over 90 per cent of that traffic is interstate.

On August 1, 1921, the Commission, proceeding under Section 15 (6) of the Interstate Commerce Act,

on its own motion, began the proceeding by entering and serving upon the Brimstone, the Louisiana Western and Kansas City Southern Railroads, respondents, the following order, viz:

> "The Commission having under consideration the rates on crude and fuel oil, in tank cars, from certain Texas points to Sulphur Mine, La., for application over the Southern Pacific or Kansas City Southern Railroad in connection with the Brimstone Railroad & Canal Company, and on shipments of sulphur in carloads, from Sulphur Mine over the said railroads:
>
> "*It is ordered*, That the Commission upon its own motion enter upon an investigation into and concerning the justness, reasonableness, and equitableness of the divisions received by the Brimstone Railroad & Canal Company out of the joint rates applicable to the transportation of property over said railroads.
>
> "*It is further ordered*, That the Brimstone Railroad & Canal Company, the Southern Pacific Company, and the Kansas City Southern Railway Company be, and they are hereby made respondents to this proceeding, and that a copy of this order be served upon such respondents; and that notice of this proceeding be given to the general public by depositing a copy of the order in the office of the Secretary of the Commission at Washington, D. C.
>
> "*And it is further ordered*, That this proceeding be assigned for hearing at such time and place as the Commission may hereafter direct" (R., 336).

Pursuant to this order, a hearing was held before an examiner at Washington, D. C. The case was

briefed and argued orally before the Commission, and on April 4, 1922, a report was made and filed by the Commission, and served upon the respondents (68 I. C. C., 375; R., 40). In this report the Commission recognized the Brimstone as a common carrier of property subject to the Interstate Commerce Act, lawfully entitled to participate in joint through rates with other common carriers or to have its charges on interstate shipments absorbed under appropriate tariff provisions.

No divisions were fixed at that time, but the Commission held the matter open, saying:

> "The divisions to the Brimstone should produce no more than an amount sufficient to cover the cost of its service and a fair return upon the property held for and used in the service of transportation. We conclude that the facts of record, including the dividends paid by the Brimstone in past years and the accumulated credit balance to profit and loss, indicating divisions to the Brimstone which are disproportionate, in view of the service rendered, are tantamount to a rebate to the proprietary company.
>
> "We find that the divisions of joint rates now received by the Brimstone from the two other respondents on interstate traffic *are, and for the future will be* unjust, unreasonable, inequitable, and to the extent that they exceed or may exceed the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, are excessive and in effect amount to a rebate to the proprietary company. It does not necessarily follow that reasonable and equitable divi-

sions to the Brimstone should be on the maximum basis.

"The record will be held open for a period of ninety days from the date of service of this report, during which respondents will be expected to make the necessary cost studies for the purpose of arriving at reasonable divisions to the Brimstone." (Italics ours.) (R., 56.)

Thereafter the Brimstone, with the co-operation of representatives of the Commission, made a study of the cost of performing its common carrier service. No study was made then or at any time of the amount necessary to pay the respective operating expenses, taxes, and a fair return on the railway properties of the Louisiana Western Railroad and the Kansas City Southern Railway, also respondents, or other lines participating in the joint through rates with the Brimstone.

A further hearing was held at Memphis, Tenn., on November 14 and 15, 1922, at which the cost study was put in evidence, and further testimony taken, after which a tentative report was made by an examiner of the Commission. Exceptions to this report were filed and the case was argued before the Commission on July 11, 1923.

On April 5, 1924, the Commission served its report, opinion, and order dated March 10, 1924 (88 I. C. C., 62; R., 57), reiterating its former finding that the Brimstone was a common carrier of property subject to the Interstate Commerce Act, entitled to receive just and reasonable divisions of the rates jointly established by it and its trunk line connections under ap-

propriate tariff provisions, and prescribing what it alleged to be just, reasonable, and equitable divisions *to the Brimstone*, making the order effective August 1, 1921, the date of the order of investigation. No finding was made in this report and order of the amount necessary to pay the respective operating expenses, taxes, and a fair return on the railway properties held for and used in the service of transportation of the railroads connecting with the Brimstone, and the remaining portions of the joint rates were not apportioned among or between the several carriers participating therein.

The Brimstone applied for a rehearing (R., 76) and the case was reopened and the order suspended pending further investigation.

Exceptions were also filed to the Commission's jurisdiction to make its order prescribing divisions retroactive (R., 87).

The Commission then had its representatives make a cost study of the operations of the Brimstone, but of none of its connections.

A further hearing was then held when the Commission's and respondents' exhibits were filed in evidence and oral testimony taken. Briefs were filed and the case further argued before the Commission, and on December 14, 1925, the Commission made and entered a third and final report, opinion, and order, which it served upon the respondents on January 19, 1926. (R., 100-128.)

The order (R., 127) of December 14, 1925, reads:

> "*It appearing* that on April 4, 1922, and March 10, 1924, the Commission entered its re-

port, and its report and order on further hearing, respectively, in the above-entitled proceeding, and that on May 5, 1924, it postponed the effective date of said order until the further order of the Commission, and reopened the proceeding for the purpose of enabling the Commission to conduct a cost study and for such further hearing as the Commission might direct:

"*It further appearing* that such further hearing has been had, and the Commission having, on the date hereof, entered its report on said further hearing containing its findings of fact and conclusions thereon, which said report, and the reports of April 4, 1922, and March 10, 1924, except as modified herein, are hereby referred to and made a part hereof:

"*It is ordered* that said order of March 10, 1924, be, and it is hereby, vacated and set aside.

"*It is further ordered* that for the period from August 1, 1921, to but not including July 1, 1922, the divisions of interstate joint rates received by the Brimstone Railroad & Canal Company, hereinafter termed the Brimstone, on freight traffic interchanged with the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, hereinafter termed the connecting lines, shall be adjusted so as not to exceed the following amounts:

"From the Louisiana Western Railroad Company:

"On all carload traffic, $7.22 per car; on merchandise, less than carloads, 11.5 cents per 100 pounds.

"From the Kansas City Southern Railway Company:

"On all carload traffic, $8.89 per car; on merchandise, less than carloads, 15.5 cents per 100 pounds.

"*It is further ordered* that on and after July 1, 1922, the divisions of interstate joint rates received by the Brimstone on freight traffic interchanged with connecting lines shall be adjusted so as not to exceed the following amounts:

"From the Louisiana Western Railroad Company:

"On all carload traffic, $6.50 per car; on merchandise, less than carloads, 10.5 cents per 100 pounds.

"From the Kansas City Southern Railway Company:

"On all carload traffic, $8.00 per car; on merchandise, less than carloads, 14 cents per 100 pounds.

"*And it is further ordered* that this order shall take effect as of August 1, 1921, and shall continue in force until the further order of the Commission." (R., 127.)

The Brimstone thereafter filed a bill in equity (subsequently amended) in the United States District Court for the Western District of Louisiana, Lake Charles Division, praying that the order of August 1, 1921, the report of April 4, 1922, the reports and orders of March 10, 1924, and December 14, 1925, be annulled, avoided, and set aside, and applied for a temporary injunction, and afterwards a final injunction prohibiting the United States of America and the Interstate Commerce Commission enforcing or attempting to enforce or put into operation or effect any portion of any or all of those orders, or collecting or attempting to col-

lect any penalties from the Brimstone for its failure to comply with the said orders of March 10, 1924, or December 14, 1925, or any part thereof; and prohibiting the Louisiana Western Railroad Company and the Kansas City Southern Railway Company, their officers, agents, employees, and all other persons acting, or claiming to act under their authority, from complying with, enforcing, or attempting to enforce or put into effect any portions of the orders of March 10, 1924, or December 14, 1925 (R., 1-39; 128-130).

District Judge Dawkins, to whom the application for injunction was presented, called to his assistance Circuit Judge R. H. Walker (Fifth Circuit) and District Judge Louis H. Burns (Eastern District of Louisiana), as required by the District Court Jurisdiction Act (38 Stat., 220), and this special court, after hearing the application for a preliminary injunction, filed an opinion, written by Judge Dawkins and concurred in by Judge Burns, and entered a decree granting the preliminary injunction as prayed for (R., 130, 167; 13 Fed. (2d), 814).

No appeal was taken by the defendants. The case came on for final hearing before the same three judges, and after the introduction of the same evidence submitted upon the hearing on the preliminary injunction and argument, it was submitted, and an opinion, written by Judge Walker and concurred in by Judge Burns, was rendered, reversing the former decree and dismissing the bill (R., 322). A final decree was entered accordingly on January 19, 1927 (R., 325).

From the final decree the Brimstone appealed direct to the Supreme Court of the United States. At the same time an order was entered by the three judges staying the enforcement of the Commission's order of December 14, 1925, pending the appeal (R., 331).

Jurisdiction.

The jurisdiction of the district court and this Court arises under the *Urgent Deficiency Appropriations Act* (38 Stat. L., 219). The Brimstone is a citizen of Louisiana and resides in the Western District, Lake Charles Division thereof, where the matter complained of arose. The order was not made upon the petition of any party. The amount involved is more than $3,000. A direct appeal to this Court is provided for under the provisions of the act just mentioned.

Assignments of Error Relied on.

The lower court, in granting the preliminary injunction, agreed with the plaintiff in error in its attack on the Commission's orders for the reasons set out in paragraph II hereof. It was unnecessary for the court to discuss any other ground of illegality urged.

On the final trial the court discussed the point decided before and reversed its former finding, Judge Dawkins, however, adhering to his original opinion. The other grounds of attack were passed without any consideration, or at least without any discussion whatever. The court decided that the order of the Commission complied with the law and was supported by evidence.

While the errors charged to the lower court in denying the injunction are many, we have, in order to save the time of this Court, reduced the points to be argued to a minimum, any one of which, however, should be sufficient in itself as a basis for the injunction.

So reduced, these points are:

I.

(*a*) The Interstate Commerce Commission did not investigate or determine the reasonableness or justness of the divisions under consideration or whether they would be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto and participating therein, and did not give consideration to any fact or circumstance which would entitle one of such carriers to a greater or less proportion than another carrier of the joint rates, as is required by Section 15, paragraph (6), of the Interstate Commerce Act.

(*b*) That the Interstate Commerce Commission is and was without jurisdiction, power or authority to determine or prescribe the divisions to be received by the Brimstone Railroad & Canal Company out of the joint rates, fares and charges received by it and the several carriers participating in said joint rates, except as between the carriers parties thereto, and except after a hearing and investigation of the operating expenses, taxes and other facts and circumstances connected with the operation of each of the several carriers participating in such joint rates as specifically

set forth in said section and paragraph. (See Assignment of Error No. III; Record, 327.)

II.

The Commission was and is without power and authority to establish divisions of joint through rates to be applied prior to the date of its final order and retroactively unless and until the joint rates, of which such divisions form a part, were and have been established pursuant to a finding or order of the Commission, which finding or order establishing such joint rate must have been made under the provisions of Section 15 (3) of the Interstate Commerce Act, which had not been done in this case; the lower court being in error in holding that the increase in rates allowed by *Ex Parte* 74 Increased Rates 1920, 58 I. C. C., 220, was the establishing of the joint rates. (See Assignments of Error I and IV; Record, 326, 328.)

III.

The report and order of the Commission of December 14, 1925, results in the taking of the property of the Brimstone without due process of law and the confiscation thereof in violation of the Fifth Amendment to the Constitution of the United States for the following reasons: (a) The application of the order to the traffic which actually moved over the Brimstone would not produce sufficient revenues to meet its actual operating expenses or even to meet its operating expenses and pay a fair return on its properties after making the adjustments prescribed by the Com-

mission. (*b*) The Commission had before it no evidence of any operating expenses of the Brimstone for the years 1924 and 1925, and could not, therefore, determine the amount necessary to meet those operating expenses. (See Assignments of Error V, VI and VIII; Record, 328, 329.)

IV.

The divisions received by the Brimstone had all been proportionately reduced by Section 15 (2) of the Interstate Commerce Act before collection, and the Government has appropriated the excess net railway operating income of the Brimstone over 6 per centum per annum on the value of the carrier's property used in the service of transportation.

We will discuss these points in the order named:

I.

(a) The Interstate Commerce Commission did not investigate or determine the reasonableness or justness of the divisions under consideration or whether they would be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto and participating therein, and did not give consideration to any fact or circumstance which would entitle one of such carriers to a greater or less proportion than another carrier of the joint rates, as is required by Section 15, paragraph (6), of the Interstate Commerce Act.

(b) That the Interstate Commerce Commission is and was without jurisdiction, power or authority to determine or prescribe the divisions to be received by the Brimstone Railroad & Canal Company out of the joint rates, fares and charges received by it and the several carriers participating in said joint rates, except as between the carriers parties thereto, and except after a hearing and investigation of the operating expenses, taxes and other facts and circumstances connected with the operation of each of the several carriers participating in such joint rates, as specifically set forth in said section and paragraph.

The divisions which the Commission attempted to fix and adjust by its order of December 14, 1925, which is here under attack, are of joint rates applying from and to Sulphur Mine, Louisiana, to and from various other points in other States. Shipments under these joint rates move over the Brimstone (where the majority of the traffic is originated) and its two connections, the Louisiana Western and Kansas City Southern Railroads, and necessarily other lines with which they connect. The Louisiana Western and Kansas City Southern Railroads were made respondents in the Commission's proceedings, although their divisions were not investigated, and none of the other carriers participating in the joint rates divided were even made a party to the proceedings.

It is the position of the plaintiff in error that the Commission necessarily acted under such authority as was vested in it by Section 15 (6) of the Interstate

Commerce Act; that under that statute its only authority was to determine whether the divisions of the joint rates were or were not just and reasonable *as between* the carriers participating therein; and that the Commission could not merely determine that the Brimstone was making more than what it considered to be a fair return from its share of the joint rate and require it to pay the so called excess to its connections, as it did in this case, when it did not even attempt to determine if those connections were making more or less than a fair return.

That Section 15 (6) of the Interstate Commerce Act reads:

> "Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would

> have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."

It is also the position of plaintiff in error, which needs no citation in its support, that the Commission has no implied powers, and can exercise only those which are especially delegated to it by law. Further, that the statute above quoted was the only authority under which the Commission could act in the proceedings which are under attack. That therefore, if the purpose of the order of the Commission, if the method of procedure followed by the Commission, or the result of the order was not authorized by the statute, that order, though regular on its face, must be set aside.

> "An order regular on its face may, of course, be set aside if made to accomplish a purpose not authorized."
>
> Akron, etc., *v.* United States, 261 U. S., 184.

The language of the original order of investigation shows that it was directed to the Brimstone's divisions only:

> "The Commission having under consideration the rates on crude and fuel oil in tank cars from certain Texas points to Sulphur Mine, Louisiana, for application over the Southern Pacific or Kansas City Southern Railroads in connection with the Brimstone Railroad & Canal Company, and on shipments in carloads from Sulphur Mine over the said railroads:
>
> "It is ordered, that the Commission, upon its own motion, enter upon an investigation into and concerning the justness, reasonableness, and equitableness of the divisions received by the Brimstone out of the joint rates applicable to the transportation of property over the said Railroad."

The final order of December 14, 1925, is directed against the Brimstone, the Louisiana Western and Kansas City Southern Railroads, but the divisions thereby fixed, without reference to any joint rate, are only those to be received by the Brimstone.

The divisions are stated by the Commission to be "based upon the cost of service and a fair return upon the value of the property held for and used in

the service of transportation for the public generally," etc. (104 I. C. C., 435; R., 100).

The cost of service and the fair return mentioned are as to the Brimstone alone; they do not refer to the Louisiana Western or the Kansas City Southern or any other carrier. It is, therefore, submitted that the Commission failed to observe the mandate of the statute (Sec. 15, (6)), quoted above, which required that the Commission give consideration to the cost of operation, a fair return, and other facts and circumstances of and relating to the carriers participating in the joint rate.

Section 15 of the act quoted above serves the dual purpose of authorizing the Commission to prescribe divisions for the future and, under certain circumstances, to determine what, for the period subsequent to the date of the order of investigation and prior to the finding, would have been just, reasonable and equitable divisions of the joint rates *to be received by the several carriers parties thereto* and require adjustment to be made accordingly.

This section, which was added to the *Interstate Commerce Act* by the *Transportation Act*, 1920, was ably discussed in the *New England Divisions case* (Akron v. United States, *supra*), and we here paraphrase that discussion for the light it throws upon the illegality of the Commission's order, not only from a legal standpoint, but when considered in connection with the entire transportation system.

In adopting this law Congress had in view the fact that greatly increased freight rates would not be

tolerated; that it was necessary to avoid burdensome rate increases, but at the same time to secure revenues adequate to satisfy the needs of the weaker carriers. To accomplish this, one of the devices adopted by Congress was the determining and prescribing of divisions of joint rates, so that one carrier which was making out of its divisions more than a fair return could be required to pay another participating carrier, *which was in need thereof*, a greater percentage of the joint rate. The only public concern in the distribution of these joint rates among the several carriers was the prevention of the increase of the total rate. The public and the Commission had no other interest therein.

It is readily seen from the above, as well as from the plain language of the law, that the Commission was authorized to investigate the reasonableness, justness, and equitableness of the divisions of the several carriers who were parties to the joint rate and to establish divisions *as between them*. In prescribing divisions, the Commission is required to give consideration to the efficiency with which *the carriers concerned* are operated, the amount of revenue required to pay *their* respective operating expenses, taxes, and a fair return on *their* railroad property held for and used in the service of transportation, and the importance to the public of the transportation service of *such carriers*, and also whether any particular participating carrier is an originating, intermediate, or delivering line; and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle *one carrier to a greater or less proportion* than another carrier of the joint rate fare or charge.

Unless the Commission complied with this law and followed the requirements thereof, it acted beyond its authority and its action must be held invalid. The record plainly shows that in attempting to fix divisions for the Brimstone the Commission did none of the things required of it except to investigate the operating expenses, taxes, etc., of the Brimstone only.

Its order of investigation of August 1, 1921, stated that the Commission would

> "Enter upon an investigation into and concerning the justness and equitableness of the divisions received by the Brimstone Railroad & Canal Company out of the joint rates applicable to the transportation of property over said railroads;"

but the Commission did not investigate the justness, reasonableness and equitableness of the divisions received by any of the connecting carriers, nor any of the carriers participating in the joint rates except the Brimstone. There is no evidence in the record as to the respective operating expenses, taxes and value of the railway property held for and used in the service of transportation of the several carriers participating in the joint rates, and no fact or circumstance is of record which would show whether one of such carriers is entitled to a greater or less proportion than another carrier of the joint rate or charge in effect over their respective lines. Nor was it ever found that the divisions received by the Brimstone were unjust or unreasonable as between it and the other carriers participating in the joint rates.

The Commission caused its representatives to make cost studies *of the Brimstone only;* but no cost study was required or made of the other carriers participating in the joint rates.

The order of December 14, 1925, did not "prescribe the just, reasonable, and equitable divisions" of joint rates *"to be received by the several carriers,"* but prescribed for the future and determined for the past alleged "just, reasonable and equitable divisions to the Brimstone Railroad & Canal Company" only.

There is no evidence in the record before the Commission to show the justness, reasonableness or equitableness of the divisions received by the several carriers parties to the joint through rates. So far as the Louisiana Western and the Kansas City Southern Railroads are concerned, they may have made in the past and may be making from this same traffic, ten, twenty, or thirty per cent on the value of their property used in the transportation of commodities originating on the Brimstone.

The Commission has divested the Brimstone of what it terms to be the excess over a fair return, and has required it to give this alleged excess to the Louisiana Western and the Kansas City Southern, without considering whether these two lines were making less or more than a fair return, or whether they were getting less or more than their proper apportionment of the joint rates.

In order to be unjust, unreasonable, or inequitable, a division may be too high or too low, but it must be relatively so. Let us assume that the investigation in

which the Commission merely considered the operating expenses, taxes and a fair return on the railway property held for and used in the service of transportation by the Brimstone, had shown that it was not receiving a fair return on the fair value of its common-carrier properties. Could the Commission in such a proceeding have required the Kansas City Southern and the Louisiana Western to reimburse the Brimstone an amount sufficient to increase its revenues for the past, or to give up a portion of their divisions to increase that revenue for the future without evidence to show whether these connecting roads received more or less than their just share of the through rate?

If the Commission may require the Brimstone to adjust divisions with these two connections without considering their needs or the needs of any of the other carriers participating in the joint through rates, and after merely investigating the affairs of the Brimstone, it follows on the same theory that had it found the Brimstone's divisions too low to pay its operating expenses, taxes, and a fair return on the fair value of its railway property, it could have required the connecting lines to contribute out of the through rates to the Brimstone divisions necessary to increase its revenues so as to pay its operating expenses, taxes and a fair return on the value of its railway property, without investigating the needs or operating costs of the other carriers, and based upon a cost study only of the Brimstone.

Had this been the result of the Commission's investigation, either one of the connecting carriers, or any carrier participating in the joint through rates, would

certainly have been entitled to relief from the Commission's order.

It is clear that the only duty or authority resting on or vested in the Commission was to adjust the divisions *as between* the several carriers participating in the joint rates after a full hearing and investigation of the operating expenses, taxes, and amount necessary to pay a fair return on the value of the property of each of them. Each carrier would then have had its opportunity to abide by or contest the Commission's order, and all of this would have been done without adding anything to the transportation charge of the shippers.

Two cases have been recently decided by this Court, in both of which orders of the Commission prescribing divisions of joint rates were under attack:

Akron v. United States, *supra* (*New England Divisions case*).

United States v. Abilene & Southern Ry. et al., 265 U. S., 274; 68 L. Ed., 1017 (Orient case).

In its report in the *New England Divisions case* of January 30, 1922, 66 I. C. C., 196, the Commission used the following language:

> "We are bound under the statute to determine whether divisions properly in issue justly, reasonably, and equitably compensate *each* carrier relatively and *per se* for the service it performs in the joint haul under joint rates, fares, and charges. Our determination must be predicated upon a consideration of all the various pertinent factors, including the ability or disability of the *several carriers* to adequately, economically,

> and efficiently meet *their* common-carrier obligations. In the final analysis, the just measure of divisions is the reasonable and equitable share of the revenue earned under the rates to be divided *which each carrier should receive.*" (Italics ours.)

The Commission here specifically recognized that its only authority is to determine whether divisions of joint rates *properly compensate each carrier* and to fix the just measure and equitable share of the joint rates which each carrier should receive. This is what the Commission actually did in the *New England Divisions case*, but entirely failed to do here.

In the *Orient case* the Commission had attempted to do the same thing, and had again stated in plain language its conception of its duty in the premises as it had expressed it in the New England case (73 I. C. C., 324).

The *New England Divisions case* was a complaint brought before the Commission by certain railroads in New England to secure for themselves larger divisions out of joint through rates between New England Territory and other portions of the United States. The Commission determined and directed that the divisions accruing to these roads be increased 15 per cent, which was to be deducted from the divisions received by the carriers west of the Hudson River. A large number of the carriers affected by the decrease brought suit to set aside the order of the Commission, urging many reasons why it should be held void. Only those pertinent to the question here discussed are referred to.

The first paragraph of the decision (261 U. S., 184) recites what the Commission must do, viz., *fix the divisions between the carriers who are parties to the joint rates*. The order of the Commission was upheld for the reason that the court found that the Commission had before it evidence which it considered ample in quantity to fix the divisions *as between the carriers*. That there was typical evidence before the Commission of the needs of the New England lines as well as of the condition of the connecting lines is plainly shown by the Commission's reports in the case, 62 I. C. C., 513, and 66 I. C. C., 196, as well as by the decision of the Supreme Court, *supra*, in reviewing the Commission's report and order.

This is entirely different from the present case, *in which there was no evidence before the Commission*, typical or otherwise, as to the operating expenses, taxes, investment in carrier property or value of carrier property of the connecting lines, or other lines participating in joint rates with the Brimstone; nor was there any showing that the financial needs of the connecting carriers demanded a contribution by the Brimstone in order to increase their revenues.

This Court in the *New England Divisions case*, *supra*, answered its own question regarding the share of a joint rate to be paid to any carrier by saying:

> "It is the amount properly apportioned out of the joint rate" (261 U. S., 184, at p. 195).

In this language the court declared that the fixing of divisions under Section 15 of the *Interstate Com-*

merce Act is an apportionment of a joint through rate *among the several carriers*. It necessarily follows, therefore, that the divisions of only one of the carriers participating in the joint rates cannot be fixed as just, reasonable, and equitable without consideration of the proper *apportionment* of the joint rates as between all the other carriers participating therein. The court found that the method pursued by the Commission was in conformity with the statute, but specifically pointed out that the action should have been as we claim it should be in this case, i. e., after investigation of the traffic, transportation and operating conditions and of the divisions of the other participating carriers.

Again the court, in its opinion, said that when Congress imposed upon the Commission the duty of determining divisions it provided that—

> "If the Commission finds that evidence introduced is typical of traffic and operating conditions and of the joint rates and divisions * * * it may be accepted as *prima facie* evidence bearing upon the proper divisions of each joint rate of every carrier in that group" (261 U. S., 184, at p. 199).

The Commission failed in the instant case to find and determine that evidence of operating expenses, taxes, revenues, etc., of the Brimstone was typical of conditions existing on the other railroads parties to the joint rate, and therefore left unaccomplished a positive requirement of the statute as interpreted by this Court. As there was no evidence before the Commission of the operating expenses, taxes or operating conditions

of the other carriers, a finding that the operating expenses and traffic conditions of the Brimstone are typical of the conditions existing on the other railroads would have been impossible; and no such finding was made.

The *Orient case* (*United States v. Abilene and Southern Railway, supra*) even more strongly supports our contentions. This case arose out of an order of the Commission fixing the divisions of joint interstate rates between the Kansas City, Mexico and Orient System with thirteen other carriers whose lines make direct connection with it. The main ground for increasing the divisions of the Orient was that it was a weak road in need of financial aid, and this Court held that this was one of the factors which might be considered in determining the justness of a division; but the order was, nevertheless, set aside.

The report of the Commission in the *Orient case* (73 I. C. C., 313) shows that it fixed divisions to be received by individual carriers who participated in the rates. In reviewing the case this Court again set forth the duties of the Commission in fixing divisions of joint rates as follows:

> "The Commission must consider, also, whether a particular carrier is an originating, intermediate, or delivering line; the efficiency with which the several carriers are operated; the amount of revenue required to pay *their respective* operating expenses, taxes, and a fair return *on their railway property;* the importance to the public of the transportation service of such carrier, and other facts, if any, which

> would, ordinarily, without regard to the mileage haul, *entitle one carrier to a greater or less proportion than another of the joint rate*." (Italics ours.) (265 U. S., 274, at p. 284.)

It is claimed by the Commission in the *Orient case* that there was evidence in the record from which it could reach a conclusion "as to whether or not the divisions taken as a whole were equitable as between the Orient and its several connections."

But this Court disagreed with the Commission and said:

> "The power conferred by Congress on the Commission is that of determining, in respect of *each joint rate* what divisions will be just. Evidence of individual rates or divisions said to be typical of all affords a basis for a finding as to any one, but averages are apt to be misleading. It cannot be inferred that every existing division of every joint rate is unjust as between particular carriers, because the aggregate result of the movement of the traffic on joint rates appears to be unjust" (265 U. S., 274, at p. 291).

In closing its decision the court states in the *Orient* case that—

> "In the New England Divisions case, tariffs and divisions sheets were introduced which, in the opinion of the Commission, were typical in character and ample in quantity to justify the findings made in respect to each division of each rate of every carrier" (p. 291).

and concludes by saying,

> "A like course should have been pursued in the proceeding under review" (p. 291).

As we have pointed out, the Commission fixed divisions to be received by the Brimstone to apply the same on all shipments, regardless of the total rate. It is very plain that while a division received from one joint through rate might be unjust and inequitable as between the carriers who participate therein, or as to any one of those carriers, the division received from another joint rate may not be so unjust or inequitable. There was no evidence before the Commission from which it could determine whether the divisions received by the Brimstone or any other carrier from any particular joint rate were just or equitable, and no investigation was attempted with respect to any particular joint rate or division thereof. This Court in the Orient case, *supra*, held that this was an absolute necessity, and, as the Commission has not followed that procedure, its order must be set aside.

To summarize:

The first argument of the plaintiff in error is that the only authority the Commission has to fix divisions of joint rates is conferred by the Transportation Act of 1920, and that is to find and fix divisions that will be just, reasonable and equitable *between* the carriers participating in the joint rate; and that to do this the Commission must consider the operating expenses, taxes, and a fair return on the properties of each participating carrier and other facts to determine whether

one of those carriers is entitled to "a greater or less proportion than another carrier of the joint rate, fare or charge."

That it was necessary for the Commission to determine as between the carriers the equitableness or reasonableness of each division of each rate of every carrier.

That as the Commission failed to follow the law it exceeded its authority and its order is illegal and should be set aside.

II.

The Commission was and is without power and authority to establish divisions of joint through rates, to be applied prior to the date of its final order and retroactively, unless and until the joint rates of which such divisions form a part were and have been established pursuant to a finding or order of the Commission, which finding or order establishing such joint rate must have been made under the provisions of Section 15 (3) of the Transportation Act, the lower court being in error in holding that the increase in rates allowed by Ex Parte 74 Increased Rates 1920, 58 I. C. C., 220, was the establishing of the joint rates.

The order of the Commission of December 14, 1925, is made to operate from the date of the order of investigation (August 1, 1921), and is thereby given a retroactive effect of more than four years under conditions which, we submit, do not meet with the requirements of the Interstate Commerce Act as amended by

e Transportation Act. The pertinent sections of is act are as follows:

"SECTION 1 (4). It shall be the duty of every common carrier subject to this act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable and equitable divisions thereof as between the carriers subject to this act participating therein, which shall not unduly prefer or prejudice any of such participating carriers."

"SECTION 15 (3). The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima, to be charged for, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), *and the divisions of such rates, fares, or charges as hereinafter provided*, and the terms and conditions under which such through routes shall be operated," etc.

Pursuant

sub
(a) par (b) (1)

"SECTION 15 (6). Whenever, after full hearing, upon complaint, or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial *as between the carriers parties thereto*, whether agreed upon by said carriers, or any of them, or otherwise established, the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof *to be received by the several carriers; and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission* and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustments to be made in accordance therewith," etc. (Italics ours.)

The Commission in effect admits that joint rates, when retroactively divided, must have been "established" pursuant to its finding or order, but makes no contention that it has ever specifically considered or fixed joint through rates applying over the Brimstone and its connecting lines.

Its only claim in this connection and the sole ground of the decision below on this point is that, as the Commission says in its report of December 14, 1925:

> "All of the joint rates so considered were established pursuant to our findings under Increased Rates, 1920, 58 I. C. C., 220."

The report of the Commission in Increased Rates, 1920, *Ex Parte 74*, 58 I. C. C., 220, is entitled:

> "In the Matter of the Applications of Carriers in Official Southern and Western Classification Territories for Authority to Increase Rates."

The rates and divisions increased as a result of the report in *Ex Parte 74* were reduced in a similar manner by percentages in *Reduced Rates, 1922*, 68 I. C. C., 676.

As the proceeding in Reduced Rates, 1922, was in the same manner and method as that followed in *Ex Parte 74*, the comments here made as to *Ex Parte 74* apply equally to both.

As the only defense made by the Commission is that these joint rates were "established" pursuant to its findings in *Ex Parte 74* (or Reduced Rates, 1922), it becomes necessary only to decide whether the reports in that proceeding or those two proceedings did "*establish*" joint rates of which the Brimstone's divisions form a part in the manner contemplated by Section 15 (6) of the Interstate Commerce Act as amended by the Transportation Act, 1920. If that report did not establish joint rates in the manner contemplated by this law, the Commission's order in this case, according to its own argument, should be set aside.

The lower court, in its decision on the preliminary trial, held that these reports did not so establish joint

rates; on the final trial it held to the contrary except that Judge Dawkins adhered to the former finding.

Ex Parte 74 was a proceeding which certain railroads of the country filed with the Commission in the spring of 1920, applying for a general increase in freight revennes so as to enable them to earn an income "equal as nearly as may be to six per cent upon the aggregate value of the railway property held for and used in the service of transportation." The Brimstone was not heard in this proceeding. The proceeding was not to investigate, determine and establish joint rates under Section 15 (1) or (3) of the Interstate Commerce Act as amended by the Transportation Act.

The provisions of Section 1 (4) of the Interstate Commerce Act above quoted had been fully complied with by the Brimstone when the order of investigation of August 1, 1921, was made and served upon it. Joint through rates then in effect were originally established by agreement between the carriers participating in such joint rates. The divisions in effect on August 1, 1921, were those specifically established by the Federal Railroad Administration, as modified by the Commission's order in *Increased Rates, 1920, Ex Parte 74, supra* (R., 170-171). The divisions as they existed when the Transportation Act, 1920, became effective on February 29, 1920, were continued in effect by agreement of the participating carriers and were protected by Section 208 (*b*), of the *Transportation Act, 1920* (41 Stat., 464), which provides that:

> "(*b*) All divisions of joint rates, fares, or charges which on February 29, 1920, are in effect

> between the lines of carriers subject to the Interstate Commerce Act, shall continue in force and effect until thereafter changed by mutual agreement by the interested carriers or State or Federal authorities, respectively."

Section 6 (1) of the *Interstate Commerce Act* provides:

> "That every common carrier subject to the provisions of this act shall file with the Commission created by this act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own routes and points on the route of any other carrier, by railroad, by pipe line, or by water, when a through route and joint rate have been established," etc.

Section 6 (2) of the act provides that schedules shall be printed and kept open to public inspection, showing the through rates established and charged to all points in the United States beyond the foreign country to which the carrier accepts freight for shipment.

Section 6 (3) provides that—

> "No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been published and filed by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public, as aforesaid."

and further provides for the manner in which such changes shall be made, authorizing the Commission in

certain cases to allow changes on less than thirty days' notice.

Section 6 (4) provides that evidence of concurrence in or acceptance of the several carriers' charges and joint rates shall be filed with the Commission.

Section 6 (5) requires every common carrier subject to the act to file with the Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of the act to which it may be a party.

Section 6 (7) prohibits any carrier from engaging in the transportation of passengers or freight unless its rates and charges have been published and filed in accordance with the provisions of the act, and further provides,

> "Nor shall any carrier charge or demand or collect or receive any greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of rates, fares, and charges so specified, nor extend to any shipper or persons any privileges or facilities in the transportation of passengers or property except such as are specified in such tariffs."

The provisions of the *Interstate Commerce Act* referred to above govern the publishing and filing of rate schedules, and heavy penalties are provided for

departing from the published rates. It was under the above-mentioned section and paragraphs that through routes and joint rates in effect over the Brimstone and its connections were voluntarily established prior to the action taken by the Railroad Administration in 1919 (R., 170, 188).

Bearing in mind the safeguards thus thrown around the schedule of rates and joint rates, voluntarily established by participating carriers, let us consider the conditions under which the Commission may prescribe the division of joint rates lawfully established.

It is the duty of the carriers under Section 1 (4) to establish through routes and joint rates, fares, and charges applicable thereto, and, in case of joint rates, to establish just, reasonable, and equitable divisions thereof *as between* the carriers participating therein. If the Commission had proceeded under Section 1 (4) of the *Interstate Commerce Act*, its duty and the limitations upon its power would have been plain, and its order establishing divisions of joint rates would have been limited to its power "to establish just, reasonable, and equitable divisions thereof, as between the carriers subject to this act participating therein, which shall not unduly prefer or prejudice any of such participating carriers."

There is no authority granted the Commission under Section 1 (4) to make the divisions retroactive.

The next mention of "divisions" of joint rates in the *Interstate Commerce Act* is found in Section 15 (3).

Section 15 (3), among other things, provides that

> "The Commission may, and it shall whenever deemed by it to be *necessary or desirable in the public interest, after full hearing* upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges applicable to the transportation of passengers or property, or the maxima or minima or maxima and minima to be charged, (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and *the divisions of such rates, fares, and charges, as hereinafter provided*, and the terms and conditions under which such through routes shall be operated." (Italics ours).

Whenever the Commission proceeds to establish joint rates, it must, therefore, accord the carrier a full hearing, whether proceeding on complaint or on its own initiative. This hearing is sacramental and has not been accorded the Brimstone. The Commission may fix the divisions of such joint rates as it establishes *after full hearing*, "as hereinafter provided," *i. e.*, as provided in Section 15 (6).

It is a prerequisite in prescribing joint through rates under Section 15 (3) that such rates shall be deemed by the Commission "to be desirable or necessary in the public interest," and a finding made accordingly. No such finding had ever been made by the Commission as to the joint rates which it had under consideration in its order of investigation of August 1, 1921. The order says:

> "The Commission having under consideration the rates on crude and fuel oil, in tank cars, from certain Texas points to Sulphur Mine, La., for application over the Southern Pacific or Kansas City Southern Railroad in connection with the Brimstone Railroad & Canal Company, and on shipments of sulphur in carloads, from Sulphur Mine over the said railroads,"

No order or finding was made as to such rates prior to or after August 1, 1921.

In *Virginian Railroad Co. v. United States*, 272 U. S., 658 (Adv., 257, 261), the Supreme Court says:

> "The Virginian contends that the order is void because the Commission directed the establishment of through routes and joint rates without finding that they are necessary in the public interest. *Such a finding is essential to the validity of an order under Section 15 (3).*"

The power of the Commission to prescribe divisions and make its order extend some four years back is a drastic power and, literally construed, is equivalent to a retroactive injunction against the carrier whose divisions are being investigated from collecting rates lawful at the time of the investigation and substituting therefor rates, rules, and practices unknown to the carrier and unborn in the minds of the authorities. Such an order further would require the carrier not to lease railroads, pay reasonable and legitimate salaries to its officers and employees, without any possible way of knowing what the Commission might ultimately demand, and thus deprive it of the right to

manage its own affairs. The retroactive feature of the order would require a dissecting of the Brimstone's capital and income accounts, allowing this item and disallowing that, and manipulating them in the Commission's own way so as to produce a certain result.

The Commission did not in *Ex Parte 74, supra*, pretend to establish joint rates in the manner provided by Section 15 (1) and (3). It considered the needs of the carriers for revenue in a broad and general way, laying great stress upon the needs of the country as a whole for an adequate transportation system and the requirements of the carriers for revenue sufficient to enable them to adequately serve the public. The railroads were grouped so as to combine the weak with the strong, knowing that in each group there were both classes of carriers. The Commission did not accord the Brimstone or any lines participating in joint rates with the Brimstone a full hearing under an order of investigation either in extension of any pending complaint or without any complaint whatever, or upon complaint made, as required by Section 15 (1) and (3), when joint rates are to be established.

In its opinion in *Ex Parte 74, supra*, the Commission said:

> "Our general conclusions as to the impracticability of specific increases or of attempting now to maintain differentials, dispose of a number of these contentions. It should also be said that while we do not here sanction specific increases in lieu of percentages, we are not to be understood as expressing disapproval of increases of that character made by the Director

> General. Such increases were made under war conditions and under circumstances that do not now exist" (58 I. C. C., 247).

The Commission then disposed of some of the contentions with respect to specific commodities mentioned in its report, and in each instance declined to itself fix or adjust such rates, except as to the percentage of increase, and in many instances left the matter to be adjusted by the carriers, and in other instances directed the application of the straight percentage increase.

The Commission then specifically referred to divisions in effect between the carriers, saying:

> "In many cases, divisions between carriers are in the form of specific amounts per unit. It is obvious that unless divisions of this character be increased, such lines will receive no benefit from the increase herein approved, while the other carriers will receive more than the respective percentage increases applicable to the traffic. It is concluded that where carriers earn specific amounts as their compensation out of through rates or fares, such amounts should be increased in the same percentage as the through rates or fares. Where the divisions of carriers participating in through rates or fares are in fixed amounts per unit and are absorbed by other carriers, such absorption should be increased in the same percentage as the through rates or fares." (58 I. C. C., 254.)

It is clearly demonstrated by the Commission's report in *Ex Parte 74, supra*, that the Commission was

attempting to provide for the urgent and immediate revenue needs of the carriers without regard to the reasonableness or unreasonableness of any joint rate, and it clearly declined in each instance to fix or approve any specific rate. There was no order made in the case, and there was no finding in the report that any specific joint rate was necessary or desirable in the public interest or unjust, unreasonable, or unduly prejudicial, and no determination by the Commission of what would be the just and reasonable joint rate or rates for the Brimstone and its connecting carriers, as required by Section 15 (1) and (3) of the Interstate Commerce Act. (First opinion of District Court, 13 Fed. (2), 914; R., 130.)

We adopt as our argument the language of Judge Dawkins below, that:

> "Can it be said, in view of these circumstances, that the action of the Commission meets the condition precedent imposed by Congress for making its rulings retroactive to the date of initiating the investigation 'in cases where the joint rate, fare or charge was established pursuant to a finding or order by the Commission * * *?' There has never been, so far as the record in this case discloses, any joint *rate 'established'* by the Commission. As above pointed out, all that was done in *Ex Parte 74*, was *to authorize* the railroad companies of the country *to increase* their rates within the maximums fixed for each group.
>
> "What has been said with regard to the increasing of rates in 1920 is equally applicable to the action of the Commission in the matter of Reduced Rates in 1922.

"It must not be forgotten that the power to make rates or to adjust the divisions thereof is a legislative function and where the Commission is permitted to make its rulings and orders, having the effect of legislation, retroactive, the existence of the conditions required by the statute must be beyond question. The general rule is that such provisions, as well as judgments, take effect from their enactment or rendition, and power such as that sought to be exercised in this case is a rare exception under modern government. Union Pacific Ry. Co. *vs.* Stockyards Company, 231 U. S., 190; 58 L. Ed., 179, and authorities therein cited; 25 R. C. L., 1010, Sec. 250.

"The Commission itself, in effect, held in two cases that general orders granting to the railroads permission to increase their rates upon a percentage basis, did not amount to an approval of existing rates. In Globe Soap Company *vs.* A. & S. Ry. Co., 40 I. C. C., 121, it used this language:

"'The permission given the Five Per Cent case, *supra*, was necessarily general. That case did not approve any specific rate as reasonable in itself or as properly adjusted with respect to other rates, nor did it justify in advance any rate which might be published as a result thereof. The act casts upon the carrier the burden of proof to show that a rate increased after January 1, 1910, is just and reasonable and that burden is not removed by a general permission of the Commission, such as that relied upon by the defendants, for it is the total rate which must be justified and not the amount of the increase. Under the law the burden in this case

was upon the defendants to show that the rates complained of were just and reasonable. They have failed to sustain that burden.' (Id.)

"And again, in Steel & Tube Company *vs.* Director General, 61 I. C. C., p. 526, it was said:

" 'We need not discuss further this phase of the controversy, for, regardless of any interpretation which may be placed upon that order, our sanction of a general adjustment does not carry with it the approval of any particular rate. Globe Soap Co. *vs.* A. & A. Ry. Co., 40 I. C. C., 131.'

"And finally, the statute itself, in paragraph 3 of Section 15, provides the manner in which joint rates or charges, such as those involved in this case, may be fixed by the Commission. It reads:

" '3. The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, *after full hearing* upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property, or the maxima or minima, or maxima and minima to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares and charges applicable thereto) and the divisions of such rates, fares and charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated; and this provision, except as herein otherwise provided, shall apply when one of the carriers is a water line, etc.' (Underscoring by writer of this opinion.)

> "What is meant by a full hearing? It would seem clear that Congress intended that there should be a full hearing of the facts and consideration of the conditions upon which particular joint rates or charges were to be established. As above stated, this had not been done in the present case prior to the proceeding to adjust divisions of rates between the complainant and the other parties, and in our opinion the Commission cannot make its order effective from the date of beginning the investigation. For these reasons the preliminary writ should be granted."

Again referring to the Commission's order in *Ex Parte 74*, upon which it relies for its statement that the joint through rates in effect over the Brimstone and participating lines were established "pursuant to a finding or order" made by it, we invite the Court's attention to the fact that the investigation in that proceeding was under Section 15*a* (2) of the *Interstate Commerce Act*, which provides that:

> "In the exercise of its power to prescribe just and reasonable rates, the Commission shall initiate, modify or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories, as the Commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditure for maintenance of way, structures and equipment, earn an aggregate net annual operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of trans-

> portation; provided that the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

The words "initiate," "modify," "establish," and "adjust," used in Section 15*a* (2) of the *Interstate Commerce Act*, indicate a wide range of power; but each power is clearly defined and is separate and distinct.

Where no rates previously existed, the Commission is authorized to initiate "or establish" them. Where rates were already established, the Commission could "modify" them, or when already established, the rates might be "adjusted." But the words "initiate," "modify," or "adjust" are not synonymous. Each has a definite meaning, and must be construed as advisedly used in the *Interstate Commerce Act* to denote separate and distinct powers. Otherwise, it would have been necessary to use only the general term "establish" and the whole purpose of Congress would have been accomplished.

The ordinary meanings of these words indicate a purpose on the part of Congress to clothe the Commission with power to raise the revenues in order to allow the carriers as a whole, or in groups or rate territories, to earn a fair return on the aggregate value of their property. The method of providing for this additional revenue was left to the Commission, and it determined to authorize percentage advances in all rates, and to this extent the existing rates were modified. All of the rates so modified had already been "established,"

either by agreement between the carriers, by the Railroad Administration, or by the Commission. No new individual or joint rates were brought into existence under *Ex Parte 74*. No "through routes and joint rates applicable thereto" were established. Such rates could not have been and cannot be lawfully established by the Commission except in the manner provided in Section 15 (1), (3), *after full hearing* and specific finding by the Commission that such rates are necessary in the public interest. Where joint rates had already been established, there was no need of establishing them.

The word "establish" means to create, to definitely fix, to bring into being something that did not definitely exist before. The word "modify" means to qualify, especially to moderate or reduce in extent or degree." (Cent. Dict.)

Existing joint rates may be modified; but existing joint rates are already established, and in the case of the Brimstone were established without any action on the part of the Commission.

Section 15 of the *Interstate Commerce Act* was not destroyed by Section 15 (*a*). The authority and power to establish joint rates under Section 15 and to fix the divisions of such rates in the manner and under the conditions prescribed were fully preserved. The Commission has held that general rate advances permitted by it do not approve any specific rate as just or reasonable.

In *Globe Soap Co. v. A. & S. Ry. Co., 40 I. C. C., 121, supra*, the defendants relied upon *The Five Per Cent Case*, 32 I. C. C., 325, and failed to introduce any evi-

dence in regard to the rates themselves, and for this reason the Commission set the case for further hearing to afford opportunity to introduce proof as to the total rate, and not the advance.

It is the total joint rate which the Commission must "establish" under Section 15 (1) and (3), and a general advance in all rates is not what is meant. It is submitted, therefore, that the joint rates, the divisions of which were fixed (for the Brimstone) in this case, were not established pursuant to an order or finding of the Commission; and that the order fixing these divisions retroactively is, therefore, void, for the reason that, in the language of the statute, it is only when the joint rate has been "established pursuant to a finding or order of the Commission," and only then, that the divisions thereof can be adjusted for a period preceding the final order.

We, therefore, submit that for this reason alone the order of the Commission should be set aside and the injunction granted as prayed for.

III.

The report and order of the Commission of December 14, 1925, results in the taking of the property of the Brimstone without due process of law and the confiscation thereof in violation of the Fifth Amendment to the Constitution of the United States for the following reasons: (a) The application of the order to the traffic which actually moved over the Brimstone would not produce sufficient revenues to meet its actual operating expenses or even to meet its operating expenses

and pay a fair return on its properties after making the adjustments prescribed by the Commission; (b) The Commission had before it no evidence of any operating expenses of the Brimstone for the years 1924 and 1925 and could not, therefore, determine the amount necessary to meet those operating expenses.

Even though it be held that the Commission did not exceed its authority and complied with the law in issuing its order of December 14, 1925, that order should nevertheless be set aside for the reasons set forth in the caption hereof.

In fixing the divisions to be received by the Brimstone from August 1, 1921 to December 14, 1925 and thereafter, the Commission considered only the Brimstone from August 1, 1921, to December 14, 1925, and amounts that have actually been expended by the Brimstone the Commission arbitrarily deducted certain sums which it held to have been unnecessary or improper. It failed to fix a value of the Brimstone's property upon which to base a fair return, and said in its report:

> "Nothing herein contained shall be construed as an indication of the value of the property which we may determine under Section 19 (*a*) of the act." (R., 126.)

The Commission excluded from the Brimstone's operating expenses for the year 1923 the actual costs paid by it for the maintenance of 2.76 miles of track used in its common carrier operations and substituted

therefor an arbitrary estimate of what, in its opinion, that maintenance cost should have been. It refused to allow the Brimstone a charge for the amortization of the company's properties, although the record (R., 303, 304 and 661) shows by uncontroverted evidence that the Brimstone was, at the time of the order, at practically the end of its life; and although the Commission has recognized the right of small carriers such as the Brimstone, whose life could be fixed definitely, to amortize their properties by including a yearly charge therefor in their operating expenses. (Allowances to Kanawha, Glen Jean & Eastern, 58 I. C. C., 405, 410; Depreciation Charges on Steam Railroad Companies, 118 I. C. C., 295.)

The Commission refused to allow the Brimstone any "going concern" value; it refused to allow it a proper amount for working capital.

These acts on the part of the Commission were arbitrary and an abuse of its power and should be sufficient to set its order aside.

However, we see no necessity for burdening the court with a detailed argument on these various irregularities and illegalities because, even accepting the findings of the Commission (though not admitting their correctness), an application of the divisions fixed to the movement of traffic over the Brimstone's lines would result in an actual loss to it and, therefore, in the confiscation of its property.

The order referred to (R., 127-128) fixed the following divisions to be received by the Brimstone:

From August 1, 1921, to July 1, 1922:

On shipments interchanged with the Louisiana Western (S. P.):

On carload traffic	$7 22 per car
On less than carload traffic,	11.5 cts. per 100 lbs.

On shipments interchanged with the Kansas City Southern:

On carload traffic	$8 89 per car
On less than carload traffic,	15.5 cts. per 100 lbs.

From July 1, 1922, and thereafter:

On shipments interchanged with the Louisiana Western (S. P.):

On carload traffic	$6 50 per car
On less than carload traffic,	10.5 cts. per 100 lbs.

On shipments interchanged with the Kansas City Southern:

On carload traffic	$8 00 per car
On less than carload traffic,	14 cts. per 100 lbs.

As we stated before, the application of these divisions to the traffic which actually moved over the Brimstone Railroad will result in an out-of-pocket loss to it.

During the year 1922, as shown by its books, the Brimstone's actual operating expenses were $163,205.47, not including taxes, rent for locomotives, or joint facility rents, which amounted to $31,963.39, making a total operating expense of $195,168.86. In arriving at the actual net operating expense, there should properly be deducted from this total the sum of $18,920.20 received from the hire of freight cars and

as income from unfunded securities and accounts, which would leave a net actual operating expense of $176,248.66 (R., 514; 676).

During that year the Brimstone handled 18,547 cars which moved via the Louisiana Western or Southern Pacific connection (A., 582), which, at the highest division fixed for any period of that year, $7.22 per car (and for a portion of the year the division under the order was lower), would have produced a revenue of $133,909.34. During the same period the Brimstone handled 1,682 cars which moved via the Kansas City Southern connection (R., 582), which, at the highest division fixed for that year, $8.89 per car, would have produced the additional sum of $14,952.98, or a total income of $148,862.32. This income would have been $27,386.34 less than the *actual net operating expenses* of the Brimstone for that year.

The application of the divisions fixed for the year 1922, therefore, produced an actual operating deficit and allows no amount whatever for a return on the value of the Brimstone's properties.

The Commission did not make any investigation of the operating expenses of the Brimstone for the year 1922 or any part thereof, and no adjustments have been made in the accounts for that year, nor was there any evidence before the Commission to show that the actual operating expenses as shown by the Brimstone's books were incorrect.

The application of the divisions fixed by the Commission would also result in a loss for the year 1923.

According to the Commission's own findings (R., 104), the Brimstone, for the year 1923, was entitled to

receive and required $167,877.07 to pay its operating expenses and a return on its property. This was a great deal less than the amount which was actually expended by the Brimstone during that year for its operating expenses. During that period 19,927 cars were handled by the Brimstone and moved via the Louisiana Western or Southern Pacific connection (R., 582), which, based on the divisions fixed by the Commission, $6.50 per car, would have produced a revenue of $129,525.50. During the same period 4,693 cars (R., 582) were handled by the Brimstone and interchanged with the Kansas City Southern connection, which, on the basis of the divisions fixed by the Commission, $8 per car, would have produced the additional sum of $37,544, or a total revenue of $167,069.50, which is $807.57 less than the amount which the Commission itself found the Brimstone was required and entitled to earn, and a great deal less than the amount which the Brimstone had actually expended.

The Commission had no evidence before it whatever to show what the operating expenses of the Brimstone were or should have been for the years 1924 and 1925, nor did it have any evidence to show the number of cars handled by the Brimstone during the year 1925; and, therefore, in fixing divisions to be applied to the traffic handled by it during that period the Commission acted without any evidence whatever, and its order for that reason alone must be set aside:

> "An order of the Interstate Commerce Commission fixing rates or apportioning joint rates between carriers, if unsupported by evidence,

> is invalid." (Akron, etc., *v.* United States, *supra.*)

And in fixing the figure which the Brimstone was entitled to earn for 1923 the Commission failed to fix a value of its properties upon which to compute a fair return, but merely took the Brimstone's investment costs, deducted accrued depreciation as reflected by its accounts as of December 31, 1923, refusing and failing to determine what the actual value of the property was; and refusing to accept the only evidence of value in the record for that year (R., 615).

We again submit, therefore, that the Commission's order, the application of which would result in a loss to the Brimstone, deprives it of its property without due process of law in violation of the Constitution of the United States, and for that reason, if no other, it should be set aside.

IV.

The divisions received by the Brimstone had all been proportionately reduced by Section 15 (a) of the Interstate Commerce Act before collection, and the Government has appropriated the excess net railway operating income of the Brimstone over 6 per centum per annum on the value of the carrier's property used in the service of transportation.

Section 15a (6) of the Interstate Commerce Act provides that—

> "If under the provisions of this section, any carrier receives for any year a net railway op-

> erating income in excess of 6 per centum of the value of its railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described."
>
> * * * * * * *
>
> "The value of such railway property shall be determined by the Commission in the manner provided by paragraph (4)."

Acting under this provision of the act, the Commission has demanded for the Government and the Brimstone has paid to it excess railway operating income as follows: for the year ended December 31, 1921, $5,774.73 (R., 672); for the year ended December 31, 1922, $21,731.40 (R., 675); and for the year ended December 31, 1923, $15,136.08 (R., 678), as shown by statements filed in the proceedings before the Commission.

The Commission in its order of December 14, 1925, on this point says:

> "The Brimstone further contends that as one-half of its excess income for the years 1921 and 1922 has been recaptured under Section 15*a*, the earnings on the value of the railway prop-

> erty held for and used in the service of transportation for those years have been 'established by law'; and that the excess earnings for 1923 are being held in abeyance to be covered by and paid to the proper authority whenever the net railway operating income, based upon the value of the property for the year ended December 31, 1923, has been finally determined. These contentions are not well founded. The payments for 1921 and 1922 were the result of tentative computations based upon the carrier's figures and not upon a finding by us. No recapture hearing has been had with respect to these sums. Since the further hearing in this proceeding, the Brimstone has made a payment on account of excess earnings for 1923, but this, too, was based upon preliminary or tentative computations. We have ample jurisdiction and authority to determine the divisions that should be paid since the date of the institution of the investigation. A careful review of the record indicates that such divisions should be the same throughout the period of investigation except that proper allowance should be made for the 10 per cent reduction of July 1, 1922." (R., 124.)

Here again we have the Commission definitely declaring that it has made no finding as to the value of the railway properties of the Brimstone held for and used by it in the service of transportation, because in recovering the excess net railway operating income in excess of 6 per cent on the value of such property, it is provided in Section 15a (6) that "the value of such railway property shall be determined by the

Commission in the manner provided in paragraph (4)."

The Brimstone contends that since the Railroad Administration fixed its divisions and the Commission allowed specific advances to be made in those divisions under its report in *Ex Parte 74*, the earnings under said lawful divisions in excess of 6 per cent on the value of its railway property held for and used by it in the service of transportation became the property of the Government. The Brimstone, therefore, could not, after the *Transportation Act, 1920*, become effective, retain out of its net operating railway income the excess of 6 per centum on the value of its railway property held for and used in the service of transportation except as provided in Section 15*a*, (7), (8). These sections provide that—

> "(7) For the purpose of paying dividends or interest on its stocks, bonds, or other securities, or rent for leased road, a carrier may draw from the reserve fund established and maintained by it under the provisions of this section to the extent that its net operating railway income for any year is less than a sum equal to six per centum of the value of the railway property held for and used by it in the service of transportation, determined as provided in paragraph (6), but such funds shall not be drawn upon for any other purpose.
>
> "(8) Such reserve fund need not be accumulated and maintained by any carrier beyond a sum equal to five per centum of the value of its railway property determined as herein pro-

vided, and when such fund is so accumulated and maintained, the portion of its excess income which the carrier is permitted to retain under paragraph (6) may be used by it for any lawful purpose."

The Commission based its cost study on the calendar year 1923 and used as the substructure of its order of December 14, 1925, a rate of return of 5.75 per cent on the book cost, less depreciation, of the Brimstone's railway property. The divisions which it has prescribed do not permit a return of 5.75 per cent on the fair value of its property, even when applied to the book investment cost, and make no provision whatever for the lean years which the Brimstone was sure to face on account of the fact that it had a limited life and must operate during the closing years of its existence at an actual loss, so that the amount already claimed by and paid to the Commission out of the excess net railway operating income for the years 1921, 1922, and 1923 has been wiped out and the reserve fund allowed by law has been swept aside by the Commission's order of December 14, 1925, without regard to the lawful uses to which it may be put.

Section 15a, (6), (7), (8), was a means provided by Congress for preventing the railroads under the jurisdiction of the Commission from earning excessive revenue. It was a method provided by law by which a carrier is compelled to keep on hand a reserve fund to be used in its lean or unprofitable years. It was never intended that, after the carrier had accumulated and made use of such reserve fund, the Commission could

in later years, long after the need for the reserve fund had arisen, and such fund had been used for lawful purpose, readjust the accounts so as to limit its return below 6 per cent and thus entirely wipe out the fund accumulated at a time when its return had not been limited by law or by edict of the Commission.

Congress fixed 6 per cent as the minimum which a railroad should be allowed to earn before attempting to appropriate a portion of its earnings "for the purpose of establishing and maintaining a general railroad contingent fund" to be used as provided in Section 15*a*. In this manner Congress proportionately reduced all of the divisions of the Brimstone before collection and made it impossible for it to earn an excessive profit, if it had been possible for it to do so, on the fair value of its property, and with due regard for its necessary operating expenses. The Brimstone could not under any circumstances, when allowed by the Commission to earn only 5.75 per cent on its book investment cost less depreciation, have accumulated a reserve fund to be used "for the purpose of paying dividends or interest on its stocks, bonds, or other securities, or rent for leased road" whenever it failed to earn 6 per cent.

Section 15*a* was considered by the Supreme Court in the case of *Dayton-Goose Creek Railroad Co. v. United States*, 263 U. S., 456; 68 L. Ed., 388. In that case *Chief Justice Taft*, as the organ of the court, said:

> "The reduction of the net operating return provided by the recapture clause is as nearly as may be the same thing as if rates had all been

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> reduced proportionately before collection. It is clearly unsound to say that the net operating profit accruing from a whole rate structure is not relevant evidence in determining whether the sum of the rates is fair. The investment is made on the faith of a profit. The profit accrues from the balance after deducting expenses from the product of the rates, and the assumption is that the operation is economical and the expenditures are reasonably necessary. If the profit is fair, the sum of the rates is so. If the profit is excessive, the sum of the rates is so. One obvious way to make the sum of the rates reasonable, so far as the carrier is concerned, is to reduce its profit to what is fair."

Good business management requires that every corporation, and especially common carrier railroads subject to changing conditions, should provide some means of meeting its obligations in lean years. This is especially necessary when, as in the case of the Brimstone, it is certain that the traffic upon which it mainly depends will, within a definite period of time, have been extinguished.

The record shows that the Union Sulphur Company, producing the principal tonnage handled by the Brimstone, ceased producing sulphur and sold and abandoned its plant on December 31, 1924, and that since January 1, 1925, it has not mined any sulphur. At that date there was approximately 881,881 tons of sulphur above ground to be moved by the Brimstone (R., 304).

The engineer of the Minerals Division of the Department of Conservation of the State of Louisiana testi-

fied that he has made an examination of the sulphur mine of the Union Sulphur Company in Louisiana and found that the sulphur deposit was exhausted as far as economic operations were concerned (R., 303).

None of this evidence was contradicted. It was, therefore, plainly evident at the time of the hearing held before the Commission in May, 1925, that the Brimstone would have to continue its common carrier operations for several years in order to move the sulphur above the ground, with the certainty of having to operate at a loss. It was, therefore, necessary for it to have a reserve fund in order to pay dividends and rent for leased road, as well as to meet the deficits which were certain to accrue during the unprofitable years of its life.

The Commission's order of December 14, 1925, denies it the right to accumulate such a reserve fund by prescribing divisions that are assumed to allow it only a return of 5.75 per cent upon the book investment cost, less depreciation, whereas the said divisions, as we elsewhere show in this brief, are not sufficient to pay its necessary operating expenses and earn a fair return upon the value of its property.

The money which the Brimstone earned in excess of 6 per cent of the value of its railway property held for and used by it in the service of transportation for the years 1921, 1922, and 1923 has never been and cannot become the property of the Brimstone under the decision of the Supreme Court in the *Baltimore Goose Creek Railway case, supra*. The court says:

> "The statute declares the carrier to be only a trustee for the excess over a fair return re-

> ceived by it. Though in its possession, the excess never becomes its property, and it accepts custody of the product of all the rates with this understanding. It is clear, therefore, that the carrier never has such a title to the excess as to render the recapture of it by the Government a taking without due process of law."

Having earned an excess over 6 per cent on the value of its railway property held for and used by it in the service of transportation for the years 1921, 1922, and 1923, and having, on demand of the Commission, paid the excess over to the Commission, its net railway operating income during those years were not in excess of the amount allowed by Section 15a.

The Commission cannot on the record as made up in Docket 12869, *Divisions Received by the Brimstone*, recover the net railway operating income or adjust it with the Brimstone, for the reason that, as we have heretofore pointed out, in its order of December 14, 1925, the Commission says:

> "Nothing herein contained shall be construed as an indication of the value of the property which we may determine under Section 19a of the act" (R., 126).

The Commission further declares that

> "No recapture hearing has been had with respect to these carriers" (R., 124).

Section 15a (6) requires in determining the excess net railway operating income to be recovered by the Government that the same shall be based upon the

"railway property held for and used by it in the service of transportation."

> "The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)."

No such determination has been made.

Since the Commission has demanded, received, and holds the excess net railway operating income of the Brimstone above 6 per cent of the value of the railway property for the years 1921, 1922, and 1923, it cannot adjust with the Brimstone the amount of excess net railway operating income due the Government except in a separate proceeding in which "the value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)," which the Commission definitely declares it did not do in Docket 12969, the case under consideration. The Government, not the Commission, is entitled to the excess. If it was earned, one half belonged to the Government, and the other one-half belonged to the Brimstone. To take this excess from the Government and present ~~return~~ it to the Southern Pacific and the Kansas City Southern is without warrant in law, justice, or equity. To take from the Brimstone its reserve fund lawfully accumulated and turn it over to the Southern Pacific and the Kansas City Southern, which the order requires, would be forcing the Brimstone to contribute its private property to its connections and thus would its property be confiscated and taken without due process of law.

Such a construction of the law as the Commission seeks to enforce in this case would not be in keeping with the constructive policy of the Interstate Commerce Act, but would be destructive of the properties of the Brimstone and deprive it of a means of providing against the lean years which it was bound to face, and in which it is now actually needing to draw on its reserve fund. Thus would the Brimstone's property be plainly confiscated and taken without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

Conclusion

We respectfully submit that the order of the Commission of December 14, 1925, is illegal, null and void for the reasons, among others, that:

(1) The divisions of the Brimstone were not found to be unreasonable as between the carriers who were parties to the joint rate as required by the Transportation Act of 1920, but an investigation was made only of the operations conducted by the Brimstone.

(2) That the joint rates of which these divisions form a part had not been established pursuant to a finding or order of the Commission as contemplated by law, and, therefore, the divisions thereof could not legally be fixed for a period preceding the date of the order—retroactively.

(3) The divisions fixed, when applied to the actual movement of cars over the Brimstone, result in an out of pocket loss to it and in the confiscation of its prop-

erty; and the divisions for 1924 and 1925 were fixed without any evidence before the Commission whatever.

(4) The Government has already appropriated the excess earnings of the Brimstone under Section 15*a* of the Interstate Commerce Act; and therefore proportionately reduced the income received by it.

If the location of the Brimstone has been fortunate and its operations successful it has been due to no unlawful enterprise but rather to its judgment and sagacious management.

In taking the legitimate earnings of the Brimstone and turning them over to its connections without a showing of necessity and without public benefit or private need, there is a violation of the fundamental rule that "the law does not attempt to equalize fortunes, opportunities or abilities." (I. C. C. vs. Diffenbaugh, 222 U. S., 42.)

The estimated amount which the Brimstone Railroad will have to surrender to its connections, and for which they have not asked, under the Commission's order of December 14, 1925, is more than $560,000.

The court will remember that there is no interest of the public involved in this proceeding. It was initiated by the Commission on its own motion. The connections of the Brimstone have not complained and are not now complaining of the divisions received by the Brimstone. If the public is found to be paying more than a proper rate; if the Brimstone has earned more than a fair return on its property and there is no showing that its connections have not earned a fair re-

turn, the remedy is for the Commission to reduce the joint rates and properly divide them between the carriers who were parties thereto. But here it has merely taken part of the rate away from the Brimstone and required it to be given to the Louisiana Western and Kansas City Southern without regard to their earnings or their needs.

Unless the Commission has followed the mandates of the law—and we submit it has not—then its orders must be set aside.

If it has followed the law and its order takes away the Brimstone's property and gives it to another—and it does unlawfully in this case—that order still must be set aside.

And we submit the case with the prayer that the decree of the lower court be reversed and the injunction issue as originally prayed for.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1927.

IN EQUITY.

No. 240

BRIMSTONE RAILROAD AND CANAL COMPANY (PLAINTIFF), APPELLANT,

vs.

UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, AND KANSAS CITY SOUTHERN RAILWAY COMPANY (DEFENDANTS), INTERSTATE COMMERCE COMMISSION (INTERVENER), APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION.

REPLY BRIEF FOR THE BRIMSTONE RAILROAD AND CANAL COMPANY.

I.

The Commission concedes, in its brief, that it made no cost study of the other carriers participating in the

joint through rates with the Brimstone, and had before it no evidence concerning the efficiency with which the carriers concerned are operated, the amount required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers, and also whether any particular participating carrier is an originating, intermediate, or delivering line, or any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

Their argument is that the Commission was not required to investigate any other participating carrier, but could proceed to fix divisions for the Brimstone separately because a literal compliance with Section 15 (6) of the Interstate Commerce Act would have required elaborate cost studies of the connecting carriers. The cost study of the Brimstone, confined in each instance by the Commission to the Brimstone, was made

> "Because of the simplicity of its small plant, substantially correct mathematical results in respect of the Brimstone's operations could be obtained through cost studies."

In assuming this position, the Commission disregards the law as a matter of expediency. The Brimstone is a short-line railroad forming a part of a

through route over which joint rates apply. The division of joint through rates is made "as between the several carriers parties thereto," and after due consideration of the matters and things referred to in Section 15 (6). When there is no evidence as to these matters there can be no consideration of them by the Commission. The order is defective on this ground.

II.

The Commission concedes that the joint rates in effect over the Brimstone and its connections were not established pursuant to a finding or order made under Section 15, and that such rates were merely affected by the recommendations in *Ex parte* 74 (Brief, 26, 27).

The Commission, on page 28 of its brief, says:

> "The above might be true if, as in the case of *United States v. Abilene & Southern Railway Co., supra*, the proportion going to the remaining carriers had been reduced, thereby endangering *their* fair returns and adequate service to the public." (Our italics.)

Here the proportion going to the trunk line carriers is taken from the Brimstone, without any showing of the needs of such carriers, and not for the purpose, as in the *New England case*, of helping out the weaker carriers. Not only was there no showing of need of additional revenues by the Brimstone's connections, but the Brimstone's earnings were wiped out for the past and destroyed for the future, and its property confiscated.

III.

On pages 36 and 37 the Commission's brief says:

> "We are not contending, as appellant seems to think, that the rates were established by the Commission. We contend that they were established by the carriers pursuant to a finding or order of the Commission."

Section 15 (6) specifically limits the authority of the Commission to prescribe divisions "for the period subsequent to the filing of the complaint or petition or the making of the order of investigation" to cases "where the joint rate * * * was established pursuant to a finding or order of the Commission."

The Commission makes no claim that it "made an order establishing joint rates for the Brimstone under Section 15. This section, paragraphs 1 and 3, are the provisions under which the Commission shall prescribe joint rates. When the Commission prescribes joint rates it must accord a "full hearing upon complaint or its own motion without complaint," and it must find such joint rates "to be necessary or desirable in the public interests."

Joint rates for the Brimstone were never established in this manner, nor were they established "pursuant to a finding or order" made by the Commission under the joint rate sections of the act. It is only the divisions of such joint rates, i. e., those established under Section 15 (3), that may be fixed "as hereinafter provided," i. e., "for the period subsequent to the making of the order of investigation."

The Commission contends in its brief (p. 40) that in fixing joint rates for the Brimstone it was proceeding under Section 15-A, a proceeding concededly based on the aggregate needs of the carriers, and not under Section 15. In its answer (R., 694) it alleges that it has given consideration to "all matters to which it is required to give consideration by the terms of Section 15 and other provisions of the Interstate Commerce Act," etc. In its order of December 14, 1925 (R., 124) the Commission states:

> "We have found in prior cases that rates so established come within the plain language of paragraph (6) of Section 15, which gives us power to require a readjustment of divisions for the period subsequent to the date the investigation was instituted where the joint rates were established pursuant to a finding or order by us."

Thus, it is plain that the proceeding was instituted under Section 15, and divisions of joint rates established "pursuant to a finding or order" under that section are the only divisions that can be lawfully made retroactive to the date of the order of investigation.

IV.

The Commission concedes that the Brimstone has paid to the Commission, and the Commission has deposited in the Treasury of the United States, one-half of the excess income for certain years, and placed the other half in a reserve fund. There is no authority vested in the Commission to take this money from the

Treasury and return it to the Brimstone, nor to take from the Brimstone its reserve fund and turn it over to its connections. Both the excess income recovered by the Government and that retained by the Brimstone in its reserve fund are dedicated to certain specific purposes. The ruling of the Comptroller General, cited on page 44 of the Commission's brief, does not alter the law. The "administration of the fund," referred to in the Comptroller General's opinion, means, we contend, its administration by using it for the purposes for which the fund was created, *i. e.*, as provided in Section 15-A (9) of the act.

V.

The Commission, on page 48 of its brief, says:

> "There is no basis for the assumption that the Commission reached its decision entirely upon evidence of value for any one year."

The basis for the statement that the Commission used the investment cost figures for 1923 instead of the value is found in the Commission's final order of December 14, 1925, in the evidence, and in its brief.

The report of the Commission of December 14, 1925, shows that the Commission's experts figured a fair return on an investment of $383,578.75 in road and equipment, including material and supplies and cash (R., 115). This amount included working capital and an amount for material and supplies recommended by the Commission's experts, and less than claimed by the Brimstone. Both of these items were rejected by the Commission (R., 115).

Neither did book investment for 1923 represent the value of the property for the years 1921 or 1922, during which years the evidence shows the value far exceeded the book investment. The Commission did not ascertain the value for 1924 or 1925, nor did it fix the value under Section 19. In disallowing the going concern value the Commission, it is true, says (R., 120): "such going concern value as may represent an asset has been included, we believe, in the figures dealing with the cost of reproduction new less depreciation." Nevertheless the Commission did not use the cost of reproduction new, less depreciation, for the years 1921, 1922, or 1923, or any other period, as the value on which it estimated a return of 5.75 per cent, but admittedly used for the year 1923, 10 per cent less than that cost, and disregarded the cost of reproduction new, less depreciation, for the year 1921, and the higher level of prices for 1921, 1922, and 1923 than in the previous years.

VI.

The Commission does not deny that its divisions applied to the number of cars handled by the Brimstone in 1923 (its sole source of revenue) would cause an out-of-pocket loss of $807.57, based upon its own adjustment in the accounts of the Brimstone, and admits that "the Commission made no finding in respect of the total amount submitted by its experts" (Brief, 52). The computations made by the Brimstone could as well have been made by the Commission. They show an actual loss of the year's operations for 1923. They

show a greater loss for 1922. And, as the main industry upon which the Brimstone depended for traffic has ceased operations, there was no hope at the time of the hearing that its losses could be made up out of future revenues. Its property is plainly confiscated by the order of the Commission, as actual results show. No test had to be made of the divisions, because the order dealt largely with past operations, the results of which are not a matter of conjecture.

VII.

The Solicitor General advances three arguments, (1) that the Commission not only had the power and authority, but it was its duty to investigate and consider the one enterprise and single investment which is the dominant feature in this case, (2) the evidence was adequate upon which to rest the order, and (3) the Commission had the authority under the statute to make its order effective as of the date of the order of investigation, and the district court was right in so holding.

(1) The Government's argument is that the statute, which is embodied in Section 15 of the Interstate Commerce Act, was complied with because "the operations of the Union Sulphur Company and appellant represent one enterprise and a single investment was a circumstance which the Commission not only had the power but was in duty bound to consider."

The answer to this contention is that it deals with the status of the Brimstone as a common carrier of property, subject to the Interstate Commerce Act.

The Commission did consider this relationship, and three times declared the Brimstone to be a "common carrier of property subject to the Interstate Commerce Act, entitled lawfully to receive just and reasonable divisions of rates jointly established by it and its trunk line connections under appropriate tariff provisions" (R., 54, 57, 101). In its own cost study, upon which it based its order of December 14, 1925, as well as in the said order, and in its order of March 10, 1924, the Commission analyzed the operations of the Brimstone, and deducted all of the items and charges against the Brimstone which it said should have been charged to the Sulphur Company. The result was that it prescribed divisions for the Brimstone without complying with the statute by investigating the operating expenses, etc., of the other carriers participating in the joint rate.

The Government contends that the Commission was not required to comply with Section 15 (6), but the attorneys for the Commission take the opposite position and argue that the statute was complied with.

A compliance with the statute is essential to the exercise of so unusual a power as the Commission is attempting in this case. We have more fully answered this argument in our original brief.

(2) We have fully pointed out in our original brief wherein the evidence was inadequate, as follows:

There was no evidence as to the operating expenses, etc., of the other lines participating in the joint rates; none as to the value or cost of the service for the years

1924 and 1925; none as to the cost of the service in 1922, except the book accounts of the Brimstone.

The Commission instituted the investigation, and made its own cost study. It directed the Brimstone and other respondents how to make the original cost study, and confined both cost studies to the Brimstone.

(3) The argument that the Commission had authority under the act to make its order, and the court was right in so holding, needs no further reply. The authority granted the Commission is specific.

In fixing joint rates, it must do so after a full hearing and a finding that such joint rates are reasonably necessary in the public interest. This it failed to do.

In fixing divisions of joint rates, so established, it must make certain investigations into the operations, etc., of the participating carriers. This it failed to do.

It must fix divisions for each carrier which allow necessary operating expenses, taxes, and a fair return on the value of their railway property. This it failed to do, fixing divisions for the Brimstone which do not pay its operating expenses as allowed by the Commission. The Government makes no answer to this last point. The Commission evades it by saying it was dealing in averages, and suggesting that the Brimstone losses for 1923 and previous years, under its divisions, may be made up out of the earnings of future years.

Conclusion.

The Government treats the case as a rebate case, although the proceeding was conducted under Section 15 of the act.

The fear of rebating expressed by the Government should be abated by the fact that the recapture provisions of the act takes away the excess profits when and if there are any, and also because the Brimstone's useful life is about exhausted, with dwindling traffic and increasing losses, it must draw upon its reserve to meet its deficits.

> "The reduction of the net operating return provided by the recapture clause is as nearly as may be the same thing as if rates had all been reduced proportionately before collection."
> *Dayton Goose Creek Ry. Case, supra.*

It is contrary to the decisions of this Court for the Commission to test the Brimstone's rights by the net result to the Union Sulphur Company, the principal stockholder of the Brimstone. Under the *Tap Line Decision (United States vs. La. & Pac. Co. et al.*, 234 U. S., 1, 58 L. Ed., 1185) the Brimstone was entitled to "just compensation" for what it actually does. "Just compensation" means more than a mere nominal division of rates.

In the case of *Brooks Scanlon Co. vs. R. Commission*, 251 U. S., 396, 399; 64 L. Ed., 323, 326, the court rejected the theory that the net result to a lumber company and a railroad company was the proper test to ap-

ply to a railroad company which, after having a number of years of profitable operation, had ceased to be profitable because the carrying of logs and lumber of the proprietary company, upon which it depended, had diminished to the point where the operation of the railroad was unprofitable.

Reversing the decision of the Supreme Court of Louisiana (144 La., 1086; 81 So., 727), the Supreme Court, through Mr. Justice Holmes, said:

> "The Supreme Court, after saying that the two corporations were one under different names, stated that the only question left for determination was whether the plaintiff could be compelled by the Commission to operate its railroad, and concluded that although the railroad showed a loss, the test of the plaintiff's rights was the net result of the whole enterprise—the entire business of the corporation—and on that ground made its decree.
>
> "We are of the opinion that the test applied was wrong under the decisions of this court. A carrier cannot be compelled to carry on even a branch of business at a loss, much less the whole business of carriage. The plaintiff may be making money from its sawmill and lumber business, but it no more can be compelled to spend that than it can be compelled to spend any other money to maintain a railroad for the benefit of others who do not care to pay for it. If the plaintiff be taken to have granted to the public an interest in the use of the railroad, it may withdraw its grant by discontinuing the use when that use can be kept up only at a loss."

Citing *Munn vs. Illinois*, 94 U. S., 113, 126; 24 L. Ed., 77, 84.

* * * * * * *

"The principle is illustrated by the many cases in which the constitutionality of a rate is shown to depend upon whether it yields to the parties concerned a fair return.

"While the decision goes upon the ground we have stated, it is thrown in at the end as a make weight that the order of the Commission calls upon the plaintiff 'to submit a new schedule of transportation which may be operated at much less expense to defendant than the former schedule of cost and at a profit to plaintiff.' This is merely the language of hope. We cannot take it to be a finding of fact, for we perceive nothing in the evidence that would warrant such a finding. The assumption upon which the Court made its ruling was that the plaintiff's other business was successful enough to stand the loss on the road."

In the case of *Norfolk and Western R. Co. v. Conley*, 236 U. S., 605, 69 L. Ed., 745, 35 Sup. Ct. Rep., 437, the court says that the State

"has no arbitrary power over rates; * * * and that the state may not select a commodity or class of traffic and instead of fixing what may be deemed reasonable compensation for its carriage, compel the carrier to transport it at less than cost, or for a compensation that is merely nominal."

In the case of *Vandalia Railroad Company v. Schnull*, 255 U. S., 113, 65 L. Ed., 539, the Supreme Court, through Mr. Justice McKenna, after citing numerous cases, says:

> "These cases leave nothing to be said, nor need we review the prior cases from which they are deductions. The concession of counsel is that it may be admitted that the North Dakota and West Virginia (Connell cases) have greatly discredited the previous theory and practice under which a rate which returned any revenue over and above 'out of pocket' costs was considered to be constitutionally remunerative. Counsel are mistaken in their judgment in those cases."

In the case of *Railroad Commission v. Eastern Texas R. Co.*, 264 U. S., 79, 85, 68 L. Ed., 569, 572, the Supreme Court, through Mr. Justice Van Devanter, says:

> "The usual permissive charter of a railroad company does not give rise to any obligation on the part of the company to operate its road at a loss. No contract that will do so can be elicited from the acceptance of the charter putting the road in operation. The company although devoting its property to the use of the public, does not do so irrevocably or absolutely, but on condition that the public shall supply sufficient traffic on a reasonable rate basis to yield a fair return. And if at any time it develops with reasonable certainty that future operation must be at a loss, the company may discontinue operation and get what it can out of the property by dismantling the road. To

compel it to go on at a loss or to give up the salvage value, would be to take its property without the just compensation which is a part of due process of law. The controlling principle is the same that is applied in many cases in which the constitutionality of a law is held to depend upon whether it yields a fair return."

We again submit that the equities are with the Brimstone, the order of the Commission is not made in conformity with Section 15, is confiscatory, and the decree of the District Court is incorrect and should be reversed.

Respectfully submitted,

JAMES T. KILBRETH.
WYLIE M. BARROW.
CULLEN R. LISKOW.

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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 240

BRIMSTONE RAILROAD & CANAL COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN Railroad Company, Kansas City Southern Railway Company and Interstate Commerce Commission

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES

OPINIONS

The specially constituted District Court (Circuit Judge Walker and District Judges Dawkins and Burns) filed two opinions. In issuing the preliminary injunction after the first hearing Judges Dawkins and Burns concurred and Judge Walker dissented (R. I, 130) 13 F. (2d) 914. In vacating the preliminary injunction and dismissing the

amended bill of complaint on the final hearing Judges Walker and Burns concurred and Judge Dawkins dissented (R. I, 322) 17 F. (2d) 165.

The reports of the Commission appear as *Divisions Received by Brimstone Railroad & Canal Company*, 68 I. C. C. 375; 88 I. C. C. 62; 104 I. C. C. 415.

JURISDICTION

The suit was commenced under Urgent Deficiencies Act (c. 32, 38 Stat. 219, 220; U. S. C., Title 28, Sec. 47). The final decree was entered and the appeal was allowed on the same day, January 19, 1927. (R. I, 325, 330.)

QUESTIONS

In ordering divisions of interstate joint rates to Brimstone Railroad & Canal Company, 9.07 miles in length, on freight interchanged with its connections not to exceed,

August 1, 1921, to July 1, 1922:

From the Louisiana Western Railroad Company:

On all carload traffic, $7.22 per car; on merchandise, less than carloads, 11.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $8.89 per car; on merchandise, less than carloads, 15.5 cents per 100 pounds.

July 1, 1922, on and after:

From the Louisiana Western Railroad Company:

On all carload traffic, $6.50 per car; on merchandise, less than carloads, 10.5 cents per 100 pounds.

From the Kansas City Southern Railway Company:

On all carload traffic, $8 per car; on merchandise, less than carloads, 14 cents per 100 pounds (R. I. 127, 128),

I. Did the Commission fail to conform to the provisions of the statute in conducting its hearings?

II. Had the Commission the power and authority under the statute to enter the order of December 14, 1925, which fixed the divisions as from August 1, 1921 (R. I, 127, 128), the date of the order which directed the investigation? (R. I, 3.)

III. Is the evidence adequate to sustain the order?

IV. Are the divisions fixed by the order so unreasonably low as to be non-compensatory and therefore a deprivation of the property of appellant without due process of law?

STATUTES

Section 4 of the Act of June 29, 1906, commonly known as the Hepburn Act, which amended Section 15 of the Act to Regulate Commerce, provides (c. 3591, 34 Stat. 584, 589, 590):

> * * * Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among

themselves upon the apportionment or division thereof, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

Section 12 of the Commerce Court Act, approved June 18, 1910, which amended Section 15 of the Act to Regulate Commerce, provides (c. 309, 36 Stat. 539, 551, 552):

> * * * Whenever the carrier or carriers, in obedience to such order of the commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each

carrier party thereto, which order shall take effect as a part of the original order.

* * * * *

The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line.

The Transportation Act provides (c. 91, 41 Stat. 456, 474, 475; U. S. C., Title 49, Sec. 1):

SEC. 400. The first four paragraphs of section 1 of the Interstate Commerce Act, as such paragraphs appear in section 7 of the Commerce Court Act, are hereby amended to read as follows:

* * * * *

(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make

reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

The Transportation Act further provides (c. 91, 41 Stat. 456, 484, 485, 486; U. S. C., Title 49, Sec. 15):

SEC. 418. The first four paragraphs of section 15 of the Interstate Commerce Act are hereby amended to read as follows:

SEC. 15 (1). That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or un-

reasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

* * * * *

(6) Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property,

Union Sulphur Company produces sulphur at Sulphur Mine, a point on appellant's line. (63 I. C. C. 74.) For the year ended December 31, 1920, the outbound tonnage consisted of 17,314 cars of sulphur, of which 4,045 cars moved all rail; 21 cars of forest products, 14 cars of rice, 2 cars of crude petroleum, 25 cars of iron and steel articles, 4 cars of household goods, and 2 cars of miscellaneous commodities. For that year the inbound tonnage consisted of 1,065 cars of crude petroleum and 131 cars of grain, hay, coal, forest products, iron and steel articles, household goods, and other commodities. The crude petroleum was used by Union Sulphur. Appellant originated 36 tons and received 323 tons of less-than-carload freight.

Slightly over 98 per cent of the carload tonnage outbound and inbound and 73 per cent of the less-than-coarload tonnage was for Union Sulphur. (68 I. C. C. 381; R. I, 47.) Appellant does not engage in the carriage of passengers, mail, or express. (68 I. C. C. 382; R. I, 48, 49.) Other than the secretary, the officials of the two companies are the same and appellant pays certain proportions of their salaries. (68 I. C. C. 379; R. I, 45.) The vice president and secretary serve without compensation. (104 I. C. C. 422; R. I, 110.)

Appellant has no funded debt. Its demand notes used in financing the construction work have been liquidated and in 1914 a dividend of 100 per cent was declared. Dividends of 60 per cent in 1917 and 40 per cent in 1918 were declared and a

credit balance in profit and loss of $165,378.82 was shown in appellant's annual report of December 31, 1920. (68 I. C. C. 382; R. I, 49.) The accumulated surplus is (April 4, 1922) sufficient to declare a dividend of about 100 per cent on the capital stock. (68 I. C. C. 387; R. I, 55.) With the exception of five shares, the entire capital stock of $200,000 (2,000 shares of $100 each) is all owned by Union Sulphur (68 I. C. C. 382; R. I, 49), which thus controls the appellant. The two concerns represent one enterprise and a single investment. (68 I. C. C. 386; R. I, 53, 54.)

Appellant owns 3 standard locomotives and 156 gondola coal cars of 100,000-pound capacity (68 I. C. C. 379; R. I, 45), but has no repair shop, roundhouse, water wells, water tanks, pumps, or water service equipment (68 I. C. C. 378; R. I, 44). Water is obtained from Union Sulphur without charge and the train shed of Union Sulphur is used as the roundhouse of appellant. (68 I. C. C. 378; R. I, 44.) Union Sulphur owns 7 standard locomotives, 15 flat cars, 10 box cars, and 75 dump cars. (68 I. C. C. 379; R. I, 45.) Repairs to equipment which involved an expenditure of nearly $73,000 in 1920 were made by Union Sulphur at cost plus 30 per cent, and one of the track crews of Union Sulphur maintains the roadway and track at actual cost to appellant, or about $29,000 in 1920. (68 I. C. C. 378; R. I, 44.) Without charge appellant operates over 6.9 miles of Union Sulphur's tracks. (68 I. C. C. 378; R. I, 44.) Part of a warehouse

of Union Sulphur is used without charge as the freight station of appellant for the receipt and delivery of less-than-carload freight for the public; the tracks of Union Sulphur adjacent thereto are used as public team tracks of appellant and an employe of Union Sulphur acts as agent of appellant. Appellant uses a part of the office of Union Sulphur at $5 per month rental, including light, heat, and janitor service; the clerical assistants employed there and paid by Union Sulphur are also used by appellant. The yardmaster at Sulphur Mine acts for both but is paid by Union Sulphur. (68 I. C. C. 378, 379; R. I, 44, 45.)

Appellant purchases its fuel oil from Union Sulphur, and supplies, other than steel rails, crossties and materials used in extension work, are obtained at cost from Union Sulphur. The latter can purchase many of them cheaper in large quantities. Appellant has its own engine crews and other employes. (68 I. C. C. 379; R. I. 45.)

Union Sulphur performs its intraplant switching and, sometimes, when convenient, the power of Union Sulphur is used to move traffic between the plant and the interchange tracks of connecting carriers. The handling of the traffic of Union Sulphur by appellant is not incident to any manufacturing process and the movements to the junction points are made to accommodate the schedules of the trunk-line connections. (68 I. C. C. 381; R. I, 47.)

Empty cars for sulphur loading are moved by appellant from the junctions to the sulphur storage bins about half a mile from the point of connection, whence they are moved by the power of Union Sulphur to the sulphur vats for loading after being weighed light on Union Sulphur's scales near the box-car loading plant. After loading the cars are again weighed by Union Sulphur. The cars are then moved by appellant about 0.5 mile over the line of Union Sulphur to the point of connection with appellant, thence to the track scales of appellant, about 0.5 mile, for weighing, thence back 0.75 mile over the line of appellant to the junction, and 0.5 mile over the interchange track of Southern Pacific at Brimstone Junction. The movement in the reverse direction is the same. (68 I. C. C. 379, 380; R. I. 46.) (See map, R. I. following page 342.)

For the first six months of 1921 appellant forwarded via Southern Pacific 419 cars of sulphur all rail and 2,621 cars which moved to Sabine by water; and during that period received 3,352 cars of fuel oil via that line. Over Kansas City Southern 358 cars of sulphur were forwarded. During the same period 7,408,767 pounds of various commodities were moved by appellant for shippers other than Union Sulphur. For the carriage of 958,438.74 tons, or 18,436 cars, of all commodities, all but 6,695 tons of which, or 186 cars, was interstate, between the plants of Union Sulphur and the

junctions with the trunk lines, the appellant received $243,163.63, or an average of $13.19 per car. (68 I. C. C. 381; R. I, 48.)

Appellant has been a participant in joint rates for a number of years and concurs in and is a party to various tariffs of Southern Pacific and Kansas City Southern and to various agency tariffs. During the period of Federal control the divisions of appellant with Kansas City Southern and Southern Pacific and their connections were revised by a committee of traffic officers of the United States Railroad Administration as a part of the general revision during Federal control of the divisions of trunk lines and short lines. (68 I. C. C. 383; R. I. 50.)

It was found by the Commission and is not disputed that the present divisions include the increases of 35 per cent under the general increases of 1920, *Ex parte 74*, 58 I. C. C. 220, and the decreases of 10 per cent under the general decreases of 1922, *Reduced Rates, 1922*, 68 I. C. C. 676 (68 I. C. C. 384, R. I. 51; 104 I. C. C. 416, R. I. 101; *Lallande*, R. I. 171; 104 I. C. C. 433, 434, R. I. 124; App. Br. 33). The present divisions are as follows:

Per 100 pounds—Sulphur, when destined to Port Arthur, Sabine, or Galveston, Tex., New Orleans, Gretna, or Algiers, La., for coastwise movement or for export, 24.3 cents per gross ton, or 1.085 cents; sulphur, when destined to points other than those shown above, 2.7 cents; fuel oil,

1.2 cents; brick, coal, and stone, 2.4 cents; cement, 3 cents; all other carload traffic, 3.6 cents; merchandise, less than carloads, 12 cents. (88 I. C. C. 74, 75; R. I, 73.)

The difference in the divisions on sulphur for coastwise movement and for export, on the one hand, and those on all other sulphur, on the other, is explained by the difference in the rates and the handling and movement of the traffic. (68 I. C. C. 385; R. I, 52.) On all rail movements of sulphur appellant is shown to receive 3 cents per 100 pounds, or about $24 per car, for the transportation to the interchanges, *e. g.*, Kansas City Southern about 7.5 miles, and Southern Pacific about 1.5 miles exclusive of the haul to and from the scales. (68 I. C. C. 387; R. I, 55.) The capacity of appellant's cars is 100,000 pounds and divisions would be $30 at the 3-cent division and $12 at the 1.2 cent division. (68 I. C. C. 387; R. I, 55.)

Without entering any formal order, the Commission condemned the divisions as disproportionate to the service rendered, as tantamount to a rebate to Union Sulphur, as unjust, unreasonable, and inequitable (68 I. C. C. 387; R. I, 56), and directed that the record should be held open for a period of 90 days in order that appellant might make necessary cost studies for the purpose of arriving at reasonable divisions based on the cost of the service rendered; and further directed that the out-of-line movement to the track scale on traffic interchanged

with Southern Pacific should not be included in computing such cost (68 I. C. C. 388; R. I, 56).

The one enterprise and single investment feature so fully elaborated by the Commission in its first report (68 I. C. C. 386; R. I, 53, 54) was not abandoned or even minimized in either of the two subsequent reports. In its second report the Commission draws from the first and repeatedly refers to the relations of appellant and Union Sulphur. (88 I. C. C. 62, 68, 69, 71, 73; R. I, 65, 66, 67, 69, 70.) The same is true of the third report which refers to "the history of Union Sulphur," "the facts concerning the incorporation" of appellant, and "the substantial dividends declared by the latter." (104 I. C. C. 416; R. I, 102.) Other references to the same or similar subjects occur. (104 I. C. C. 422, 423, 428, 432, 433; R. I, 108, 109, 110, 117, 121, 123.)

The second report relates primarily to the cost study and the controversy between the Southern Pacific and Kansas City Southern as to divisions. A table listing 13 industrial short lines showing divisions for "distances somewhat similar" to those in the instant case are set out and result in charges ranging from about $3 to $11.50 per car. (88 I. C. C. 74; R. I, 72.)

Subsequently to the promulgation of the second report, upon consideration of the record and of appellant's petition for rehearing the proceeding was reopened that the Commission might conduct a cost study. Its conclusions, in which are included the basis on which it made the order retroactive

and certain further findings on the Southern Pacific and Kansas City Southern controversies as to divisions, cover many pages of the record. Following that report the order was entered. The suit was then filed.

The case came on for hearing before the specially constituted District Court on the pleadings and a transcript of the Commission record. In issuing the preliminary injunction the District Court (District Judges Dawkins and Burns concurring) said that " without going into other matters * * * the order is given a retroactive effect of more than four years under conditions which we do not believe, in view of provisions of the statute defining the Commission's powers, is permissible. * * * There has never been, so far as the record in this case discloses, any joint rate 'established' by the Commission. As above pointed out all that was done in *Ex parte 74* was to authorize the railroad companies of the country to increase their rates within the maximums fixed for each group." (13 F. (2d) 914, 916, 919; R. I, 134, 140.)

In vacating the order granting the preliminary injunction and in dismissing the bill on the final hearing the District Court (Judges Walker and Burns concurring) said that "the rates in question came into existence as results of increasing previously existing rates as authorized by the order made in *Increased Rates, 1920*, 58 I. C. C. 220, and of reducing previously existing rates as authorized by the order made in *Reduced Rates, 1922*, 68

I. C. C. 676. * * * In establishing the new joint rates, the acts of the carriers were pursuant to a finding or order of the Commission. * * * We are of the opinion that within the meaning of the above-quoted provision (Section 15 (6)) the joint rates in question were established pursuant to findings or orders of the Commission." (17 F. (2d) 165, 166; R. I, 323.)

The final decree dismissing the bill of complaint was then entered. (R. I, 325.) Pending the disposition of the appeal the District Court stayed the force and effect of the order of the Commission. (R. I, 331.)

SUMMARY OF ARGUMENT

That the operations of Union Sulphur and appellant represent one enterprise and a single investment was a circumstance which the Commission not only had the power but was in duty bound to consider.

That a division of $10 to $24 per car appears excessive and disproportionate for the service, which is in some respects similar to a switching service, and as tantamount to a rebate to Union Sulphur, and that high dividends have been declared in the past and the accumulated surplus is sufficient to declare a dividend of almost 100 per cent on the capital stock, are also circumstances which the Commission found as indicating the divisions to appellant are unreasonable.

The huge record which was built up by the three hearings consists largely of testimony and exhibits

supplied by the appellant and indicates that the Commission had not only not acted arbitrarily but had given the case all of the consideration it was entitled to receive. The thorough analysis of the tedious evidence and numerous and voluminous exhibits and the findings and conclusion thereon need no further elaboration.

If the divisions prescribed for the appellant are just, reasonable, and equitable it does not lie within the power of appellant to complain that the Commission did not do the impossible and conduct similar hearings with respect to Southern Pacific and Kansas City Southern. Neither the statute nor the decisions require on the part of the Commission a course of action which would render impossible the enforcement of the statute. The case falls clearly within and is controlled by the *New England Divisions Case*.

As the divisions were made out of through joint rates authorized by *Ex parte 74* and *Reduced Rates, 1922*, the Commission clearly had the authority to make the order effective as of the date of the order for investigation, August 1, 1921. Without so entering it the order would avail nothing to correct the unreasonable and excessive divisions which have been received by appellant since that time.

The failure of Southern Pacific and Kansas City Southern to participate in the hearing in the District Court and in the hearing of this appeal would indicate they are satisfied with the divisions as fixed by the Commission; and as the appellant has

been accorded the hearing provided by the statute, it does not lie within its power to complain. Due to the one enterprise and single investment situation, it seems immaterial what becomes of that part of the joint through rate which goes to appellant's connections.

ARGUMENT

I

THE COMMISSION NOT ONLY HAD THE POWER AND AUTHORITY BUT IT WAS ITS DUTY TO INVESTIGATE AND CONSIDER THE ONE ENTERPRISE AND SINGLE INVESTMENT WHICH IS THE DOMINANT FEATURE OF THIS CASE

There is an ancient maxim that "He who comes into a court of equity must come with clean hands." If the prayer of the bill of complaint shall prevail, the inevitable result will be that the appellant shall have received divisions "so disproportionate as to amount to rebates or discriminations in favor of the proprietary company in view of the service rendered." (68 I. C. C. 386; R. I, 54.) Citing *The Tap Line Cases*, 234 U. S. 1, the Commission has found that since the appellant "is so closely allied to the proprietary company, the extent to which it receives divisions from the trunk lines merits careful consideration" and "One purpose of the act is to prevent rebates effected by means of exorbitant divisions which find their way to proprietary companies through common carriers like the Brimstone. We can not overlook the fact that high divi-

dends have been declared in the past or that the accumulated surplus is now sufficient to declare a dividend of almost 100 per cent on the capital stock." (68 I. C. C. 387; R. I, 54, 55.)

This case presents nothing new or unusual. It falls clearly within a line of cases in which the one enterprise and single investment arrangement has been condemned repeatedly. The cases are all one way.

In *United States* v. *Koenig Coal Co.*, 270 U. S. 512, 519, this Court stated, citing numerous cases, "We have often declared that the purpose of Congress in the Elkins law was to cut up by the roots every form of discrimination, favoritism, and inequality. * * * It would be contrary, therefore, to the general intent of the law to restrain the effect of the language used so as not to include acts exactly described, when they clearly effect discrimination and inequality."

The Tap Line Cases, 234 U. S. 1, 28, 29:

> It is doubtless true, as the Commission amply shows in its full report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines and in their dealings with other carriers which have resulted in unfair advantages to the owners of some tap lines and to discriminations against the owners of others. Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as non-proprietary traffic, and as such entitled to par-

> ticipate in joint rates with other common carriers that determination falls far short of deciding, indeed does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without any power of the Commission to control. That body has the authority and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

O'Keefe, Receiver, v. *United States*, 240 U. S. 294, 304:

> * * * The trunk line has no constitutional right to build up its business by paying bonuses or rebates that have been forbidden by act of Congress from considerations affecting the public welfare. * * * The real basis of appellant's complaint, representing a trunk-line carrier, is that the allowance to the tap line is too small. It is

questionable whether it lies in the mouth of the line carrier to object on this ground.

Manufacturers Railway v. *United States*, 246 U. S. 457, 467, 479, 480, 481:

In conclusion the Commission announced: "We regard the present allowances which, as stated, average slightly above $4.50 per car, as effecting unlawful results."

* * * * *

The question of the reasonableness of the allowances or divisions made and to be made to the Railway came into the case incidentally, but inevitably, because of the heavy shipments to and from the Brewery and the community of interest between it and the Railway. Upon this point there was abundant evidence to support the conclusion of the Commission that in making up the joint rates not more than $2.50 per car should be added to the trunk-line rates to St. Louis, and the intimation (not final, and not carried into the order) that any division to the Railway out of the joint rate in excess of $2.50 per car would amount to an undue preference or indirect rebate to the Brewery. Beyond this, no question of separate rates was involved, and the Commission did not err, in view of the issues, in assuming the trunk line rates to be reasonable *per se*. Although it might have dealt with the divisions in the same order, so far as necessary to prevent undue favoring of the Brewery (*O'Keefe* v. *United States*, 240 U. S. 294, 300–302), it was within the discretion of the Commission to

allow the carriers to make their own agreement upon the subject, as contemplated by the first paragraph of § 15 of the act (36 Stat. 551), subject to its review.

* * * * *

Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission (*Interstate Commerce Commission* v. *Alabama Midland Ry. Co.*, 168 U. S. 144, 170), and upon which its decisions, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason amount to an abuse of power. This results from the provisions of §§ 15 and 16 of the Commerce Act as amended in 1906 and 1910 (34 Stat. 589–591, c. 3591; 36 Stat. 551–554, c. 309), expounded in familiar decisions. *Interstate Commerce Commission* v. *Illinois Central R. R. Co.*, 215 U. S. 452, 469–470; *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547; *Procter & Gamble Co.* v. *United States*, 225 U. S. 282, 297–298; *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91.

For other cases to the same effect see:

Industrial Railways Case (Short Line Railroads), 29 I. C. C. 213;

Industrial Railways Case (Short Line Railroads), 32 I. C. C. 129;

Second Industrial Railways Case (Short Line Railroads), 34 I. C. C. 596;

Chicago, West Pullman & Southern Railroad (Second Industrial Railways Case), 37 I. C. C. 408;

Chestnut Ridge Railway (Second Industrial Railways Case), 37 I. C. C. 558;

Chestnut Ridge Railway, 41 I. C. C. 62;

Chestnut Ridge Railway v. *United States*, 248 Fed. Rep. 791;

Louisiana & Pine Bluff Divisions, 40 I. C. C. 470;

Louisiana & Pine Bluff Railway v. *United States*, 257 U. S. 114;

Northampton & Bath Railroad (Second Industrial Railways Case), 41 I. C. C. 68;

Owasco River Railway (Second Industrial Railways Case), 53 I. C. C. 104;

Lake Erie & Fort Wayne Railroad (Second Industrial Railways Case), 58 I. C. C. 558;

Birmingham Southern Railroad v. *Director General*, 61 I. C. C. 551.

II

THE EVIDENCE WAS ADEQUATE UPON WHICH TO REST THE ORDER

The order of investigation was entered on August 1, 1921, and the order assailed was entered on December 14, 1925, or more than four years later. After the first divisions order was entered on March 10, 1924, the appellant filed the petition for

further hearing (104 I. C. C. 416; R. 1, 102), which the Commission allowed. The further hearing, therefore, was on appellant's own application. Appellant now complains there is no evidence of any operating expenses for the years 1924 and 1925, and the Commission, therefore, had nothing before it upon which to fix the divisions for those years.

Obviously, if the Commission must keep the case open in order that new testimony may be taken each year and from year to year on operating expenses or other subjects, it would be impossible to fix the divisions. The statute does not require that hearings shall be perennial. Appellant is not in a position to complain that the Commission prolonged the entry of its final order when the appellant asked for the rehearing. The voluminous record of 774 printed pages of oral testimony and exhibits in narrative form (with the exception of certain exhibits in full) would indicate the completeness of the investigation and hearing. Moreover, the evidence which the Commission carefully examined covered a wide range of subjects. There is no presumption that the Commission was considering matters *aliunde*. The facts found in the first report may not seriously be brought in dispute.

Coming to the second report the Commission explains fully the methods used in the cost study (88 I. C. C. 63; R. 1, 58) as applied to the operations of appellant and Union Sulphur. In explanation of method of cost study, a witness for the appellant stated that the factors necessary to determine the

cost "were not available and it was necessary to make a record of such factors currently for a test period" and "such record was made over a period of seven days," and "consisted of, first, a record of the average time it took to handle a car from each connection to its destination and return, and, second, the cost of that service." Appellant's witness further explained that the accounts as kept by the appellant "were found on examination not to include all items of expenses properly chargeable to that company, which expenses have heretofore been assumed by Union Sulphur Company due to the lack of proper accounting and the closely allied situation existing between" appellant and Union Sulphur. (R. I, 337.) The appellant's line was divided into zones (R. I, 194) and "a man was placed on each Brimstone engine * * * to keep a record of the exact number of minutes each engine worked in each zone each day, which determined the total number of minutes the engine worked in each zone during the seven days' test period. That a man was also on the Union Sulphur Company's engine to keep a record of the time spent by it in performing service which that Company was entitled to require of the Brimstone as common carrier service, which, when performed in the common zone, was added to the time spent by the Brimstone engine in each zone."[1] (R. I, 196.)

[1] In *Manufacturers Railway* v. *United States*, 246 U. S. 457, 491, Mr. George F. Moore, President of Manufacturers Railway, in speaking of the cost of making the various move-

After reviewing the evidence or cost study submitted by the appellant, the Commission disallowed the allocation of 90 per cent of the computed maintenance, taxes, and interest rental on these tracks to the appellant on the basis of alleged use as not warranted (88 I. C. C. 69; R. I, 66) because the service of Union Sulphur's locomotives could be largely eliminated and "the principal use of this trackage is by the locomotive of the proprietary company in performing service which clearly is intraplant switching." On the record the Commission found "that even an equal division of the maintenance, taxes, and interest rental between the two companies would be more than should be as-

ments within the plant, testified: "I have tried in every way I could think of to determine whether the average cost of moving a car to have it weighed exceeds the average cost of moving a car for interchange with connections, or moving a car between one industry in the plant and another. The best way, to my notion, was to ride upon the engine doing the switching, for a certain length of time, and notice the business that that switch crew was handling during the time that I myself was with the engine. That I have done, and I would find the same crew and engine handling all different classes of the named groups in one cut at times, and then at times I would find an engine moving with only one class of business as grouped, and I could not determine any difference in the cost of handling the placement of one class of business as compared with the placement of another class of business. This was brought out very clearly. * * * So it has been impossible for me to segregate the cost of each of these particular services. I have stated that there is a difference of cost sometimes between handling two cars in a like business." (No. 24, Record, pp. 279, 281, Supreme Court, October Term, 1917.)

signed to the Brimstone." (88 I. C. C. 69; R. I, 66.)

The Commission questioned appellant's original estimates for cost of reproduction new as clearly excessive because they are based in large part on the peak prices of 1920. (88 I. C. C. 70; R. I, 66; R. II, 615, 616, 617, 618.) Appellant charged depreciation on freight cars at the rate of 10 per cent per annum which presupposes a service life of only 10 years with no allowance for salvage. Pointing out the inconsistency in the claim of appellant that its property "is kept up to a state of highest efficiency by constant maintenance and repairs" (88 I. C. C. 70; R. I, 67), the Commission also found that appellant has failed to include $16,987.28 earned as an allowance of 1.5 cents per mile from other carriers for the use of its cars and was charged $7,475.48 covering per diem for the use of foreign freight cars (88 I. C. C. 70; R. I, 67).

The Commission also questioned various traffic, transportation, and general expenses as not bona fide expenses of appellant, as the Commission could not understand why, as little more than a switching road, appellant should maintain a general office and officials in New York City. It appears that Union Sulphur maintains the office and appellant shares in the expense. As the Union Sulphur business constitutes practically the whole of the appellant's traffic, the Commission found appellant had little occasion to solicit traffic. (88 I. C. C. 71; R. I. 68.)

Because of the greater haul and a lesser volume of traffic the Commission found the cost of delivery to the Kansas City Southern interchange, 6 miles, in excess of the cost of delivery to Southern Pacific interchange, 1 mile, which must necessarily bring about some difference in the divisions. (88 I. C. C. 73; R. I, 71.)

The Commission set up a table of 13 cases showing the lower charges per car which the Commission had found reasonable during Federal control for distances somewhat similar to those in the instant case. Subject to the increases of 1920 and decreases of 1922, the table shows charges ranging from $3 to $11.50 per car. The Commission also found that the services here involved are performed under favorable circumstances and more favorable than in many of the cases cited in the table. (88 I. C. C. 74; R. I, 72, 73.)

Following the hearing on appellant's petition for rehearing, the Commission filed a third elaborate report (104 I. C. C. 415; R. I, 100) in which it separately and fully analyzed and considered all of the evidence and argument of appellant on the various items on which it asserted claims, viz: 1, Rail replacements. 2, Maintenance of leased tracks. 3, Locomotive repairs, depreciation, and retirements. 4, Car repairs. 5, Car depreciation and retirements. 6, Traffic and general expenses. 7, Adjustment of operating expenses. 8, Taxes. 9, Joint facility and equipment rents. 10, Material supplies and cash. 11, Apportionment of expenses

to individual cars. 12, Apportionment of maintenance-of-way expenses. 13, Cost of reproduction new. 14, Depreciation. 15, Going-concern value. 16, Amortization. 17, Common carrier and intraplant service. 18, Jurisdiction to require adjustment of divisions on past shipments. 19, Southern Pacific and Kansas City Southern controversies as to divisions. 20, Conclusions.

The facts found by the Commission and its reasoning and conclusions thereon speak for themselves and no good purpose would be subserved by further comment thereon.

The two opinions of the divided District Court never reached beyond the single question of the power of the Commission on the facts of this case to make its order retroactive as of August 1, 1921. The order was first suspended and then sustained on that question alone and the appellant argues here that the Commission is wholly without such power.

III

THE COMMISSION HAD THE AUTHORITY UNDER THE STATUTE TO MAKE ITS ORDER EFFECTIVE AS OF AUGUST 1, 1921, THE DATE OF THE ORDER OF INVESTIGATION, AND THE DISTRICT COURT WAS RIGHT IN SO HOLDING

Counsel complain that the Commission treated the case as a *divisions* case and then limited its investigation to the appellant, its operations and financial status alone without making a similar investigation of the Southern Pacific and Kansas City

Southern, their operations and financial status; and, therefore, they say, the Commission wholly failed to comply with Section 15 (6) which provides the Commission, in so prescribing and determining the divisions of joint rates, fares, and charges, "shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return upon their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."

Certainly learned counsel do not maintain in each instance that the Commission prescribes divisions among carriers that it must first hold a hearing for each carrier separately on all of these subjects in detail. A small amount of traffic in a single article may move from Boston to San Francisco. According to argument of counsel for appellant, the Commission, before it may fix the divisions, must call before it all of the carriers and receive evidence for and against each and all of the subjects listed in the statute.

In reducing divisions of joint through rates in order to eliminate rebates, preferences, and discriminations brought about through the device of one enterprise and a single investment, it must be conceded that, in passing on the validity of the order of the Commission, that circumstance is also to be considered.

The record shows that, among other things, the Commission had before it 390 sheets consisting of divisions sheets, supplements, and amendments thereto issued between May 1, 1906, and May 1, 1921, on all classes and commodities moving interstate or intrastate or for export from and to points on appellant's line and routed via Kansas City Southern and Southern Pacific. (R. II, 718, 754.)

The Commission has prescribed, after full hearings, the full amount which it considers the appellant is entitled to receive as a division of the through joint rate. Southern Pacific and Kansas City Southern were vigorous contestants, certainly against each other if not against the appellant, before the Commission. Appellant does not claim that the Commission failed to *accord to it* the hearing provided by the statute. Its claim is for higher divisions. In filing the bill of complaint appellant named both Louisiana Western and Kansas City Southern as defendants. Louisiana Western filed an answer in which it stated it would leave the matter for the decision of the courts. (R. II, 699.) Kansas City Southern filed no answer and neither

defendant has ever appeared in the case. If appellant by the order of the Commission has received all it is entitled to under the law, the adequacy or inadequacy of the amounts left for Louisiana Western and Kansas City Southern would seem to be a matter with which appellant has no concern. Those companies may take care of themselves.

The case falls squarely within the *New England Divisions Case*, 261 U. S. 184. In that case the Hudson River was made the dividing line and the divisions of the New England lines to the east thereof were increased 15 per cent. The arguments which were advanced in that case on the question of invalidity of the order have been followed in the brief for the appellant in the instant case, *e. g.*, the Commission had no authority to make such a division but that it should have considered the needs and other circumstances of each and every line separately. Overruling the arguments, this Court said (197, 199):

> Obviously, Congress intended that a method should be pursued by which the task, which it imposed upon the Commission, could be performed. The number of carriers which might be affected by an order of the Commission, if the power granted were to be exercised fully, might far exceed six hundred; the number of rates involved, many millions. The weak roads were many. The need to be met was urgent. To require specific evidence, and separate adjudication, in respect to each division of each rate of each

carrier, would be tantamount to denying the possibility of granting relief. We must assume that Congress knew this; and that it knew also that the Commission had been confronted with similar situations in the past and how it had dealt with them.

* * * * *

Fourth. It is asserted that the order directs a transfer of revenues of the western carriers to the New England carriers, pending a decision in the matter of divisions; that Congress has not granted authority to take such provisional action; and that, hence, the order is void. The argument is, that under § 15 (6), the Commission may prescribe divisions only when, upon full hearing, it is of opinion that those existing are, or will be, unjust, unreasonable or inequitable; that in such event it shall prescribe divisions which are just, reasonable and equitable; and that the provisional character of the order demonstrates that the hearing has not been a full one. Whether a hearing was full, must be determined by the character of the hearing, not by that of the order entered thereon. A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken. The Commission recognized, and observed, these essentials of a full hearing.

The questions sought to be raised in this case do not reach the heights of the questions raised in the *New England Divisions Case* or the case of *United States* v. *Abilene & Southern Railway*, 265 U. S. 274. In the former the divisions of the lines east of the Hudson were inadequate and the increase of 15 per cent was ordered. The New England lines were the sufferers. Similarly in the latter case. The Kansas City, Mexico & Orient was bankrupt and the order of the Commission sought to increase its divisions. The Court adhered to its opinion in the *New England Divisions Case*, but due to evidence which the Commission had placed in the record and considered in reaching its decision of which the defendant carriers had not been apprised, it was held that they had not been accorded the hearing provided by the statute.

In the instant case the divisions of the appellant have been fixed on a record which was largely made by appellant and of which it cannot complain. It would seem beyond its power to challenge the order because the Commission had not conducted a similar hearing with respect to the properties of the Louisiana Western and Kansas City Southern which, this Court pointed out in the *New England Divisions Case*, was not only unnecessary but impossible if the statute was to be given effect.

Learned counsel say (Br. 33): "The rates and divisions increased as a result of the report in *Ex parte 74* were reduced in a similar manner by percentages in *Reduced Rates, 1922*, 68 I. C. C. 676."

In its first report, dated April 4, 1922, the Commission, after setting forth the then existing divisions, said: "The divisions include the increases of 35 per cent under the general increases of 1920." (68 I. C. C. 384; R. I, 51.)

Due to the reduced rates of 1922, the divisions prescribed in the final order of December 14, 1925, were made lower than those fixed by the previous order of March 10, 1924. The statute provides, " And in cases where the joint rate, fare, or charge was established pursuant to a *finding* or order of the Commission and the divisions thereof are found by it to have been unjust, * * * the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof," etc.

This record sustains the holding of the District Court (17 F. (2d) 165) that the divisions were of joint rates which were established pursuant to the findings of the Commission in *Ex parte 74* and *Reduced Rates, 1922*. The action of the Commission, therefore, in making its order retroactive as of August 1, 1921, was clearly authorized by the statute. In its final report the Commission said (104 I. C. C. 433, 434; R. I, 123, 124):

> The Brimstone contends that we are without jurisdiction and authority to prescribe divisions of joint rates, except for future application. This view is based on the

theory that the joint rates in question were not established pursuant to an order from us. All of the joint rates here considered were established pursuant to our findings under *Increased Rates, 1920*, 58 I. C. C. 220. We have found in prior cases that rates so established come within the plain language of paragraph (6) of Section 15, which gives us power to require a readjustment of divisions for the period subsequent to the date the investigation was instituted where the joint rates were established pursuant to a finding or order by us. *New York Dock Ry.* v. *B. & O. R. R. Co.*, 89 I. C. C. 695, and *Marion & Eastern R. R. Co.* v. *C. & E. I. R. R. Co.*, 96 I. C. C. 402.

CONCLUSION

The decree should be affirmed and the stay order should be vacated.

WILLIAM D. MITCHELL,
Solicitor General.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

OCTOBER, 1927.

○

Supreme Court, U. S.
FILED
SEP 26 1927
CLERK

No. 240

In the Supreme Court of the United States

OCTOBER TERM, 1927

THE BRIMSTONE RAILROAD AND CANAL COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN RAILROAD COMPANY, KANSAS CITY SOUTHERN RAILWAY COMPANY, AND INTERSTATE COMMERCE COMMISSION, APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

DANIEL W. KNOWLTON,
E. M. REIDY,
For Interstate Commerce Commission.

P. J. FARRELL,
Of Counsel.

SEPTEMBER, 1927.

U. S. GOVERNMENT PRINTING OFFICE: 1927

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SUMMARY 10

I. THE COMMISSION, IN FIXING THE DIVISIONS, GAVE THE DUE CONSIDERATION REQUIRED BY THE ACT TO OPERATING EFFICIENCY, REVENUE REQUIREMENTS FOR EXPENSES PLUS A FAIR RETURN, PUBLIC IMPORTANCE, AND OTHER FACTORS NAMED IN THE ACT, IN RESPECT OF THE CARRIERS PARTICIPATING IN THE JOINT RATES 14

1. Where the need for action is merely the fixing of an industrial short-line's division, the Commission may fix separately such division while regarding the remainder of the joint rate as a joint division or joint proportion going to the carriers participating in the traffic beyond the industrial carriers' junction with the connecting trunk line, and in such case due consideration is given to the factors named by respectively considering the adequacy with relation to those factors of the separate division for the individual needs of the industrial carrier, on the one hand, and the adequacy with relation to those factors of the remaining proportion for the joint needs of the remaining carriers, on the other hand 14

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2. Where the separate fixing of an industrial carrier's division results in an increased proportion going to the trunk-line carriers, due consideration of the factors named does not require the submission of the same involved cost studies and detailed evidence in respect of the thousands of miles of road operated by the trunk lines as was found practicable in separately fixing the division of the industrial line, for, on the one hand, the interests of the trunk lines and that of the public in their efficient service has been promoted by the action taken, and, on the other hand, the fair return of the industrial line and interest of the public in its efficient service has been safeguarded by careful consideration given to de-
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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 240

THE BRIMSTONE RAILROAD AND CANAL COMPANY, appellant

v.

THE UNITED STATES OF AMERICA, LOUISIANA WESTERN Railroad Company, Kansas City Southern Railway Company, and Interstate Commerce Commission, appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA, LAKE CHARLES DIVISION

BRIEF FOR INTERSTATE COMMERCE COMMISSION

OPINION OF THE COURT BELOW

The opinions delivered in the Court below are reported in 13 Fed. (2d) 914 and 17 Fed. (2d) 165. (R. 130, 322.)

STATEMENT OF THE CASE

This is an appeal under the Act of October 22, 1913 (38 Stat. 219), from a decree of the District Court for the Western District of Louisiana, Lake Charles Division, consisting of Circuit Judge Walker, and District Judges Burns and Dawkins, denying, upon submission for a final decree, an application by the appellant railroad for an injunction to set aside an order of the Interstate Commerce Commission, dismissing the bill of complaint and dissolving a preliminary injunction theretofore issued. The Commission order complained of fixed the just, reasonable, and equitable divisions of appellant in respect of joint rates in effect as of the commencement of the proceeding, August 1, 1921, and, separately, in respect of joint rates in effect after July 1, 1922, when previously existing joint rates were reduced, and required adjustment of divisions to the bases so fixed for the period subsequent to the commencement of the proceeding as well as for the future. (R. 127.)

Appellant, hereinafter called the Brimstone, operates a railroad in southwestern Louisiana which affords connections between the plant of the Union Sulphur Company, hereinafter called the Sulphur Company, and two trunk lines—namely, the Louisiana Western Railroad Company, a subsidiary of the Southern Pacific Company, and the Kansas City Southern Railway Company, which said two trunk lines are hereinafter called the Southern

Pacific and the Kansas City Southern, respectively. (R. 2.)

The Brimstone's main line consists of the Brimstone Division of 0.75 mile, extending from the Brimstone's track scales to Brimstone Junction, where connection is made with the Southern Pacific, and the Lockport Division of 6.64 miles, extending from the track scales to Lockport Junction, now called Mossville, where connection is made with the Kansas City Southern. (R. 43.) The road also owns 1.68 miles of spurs and sidings (R. 2) and, under agreements, operates over certain tracks of the Sulphur Company and certain tracks of the Southern Pacific and Kansas City Southern at points of connection with those railroads. (R. 2.) Approximately, 98 per cent of the tonnage carried is shipped by or to the Sulphur Company. (R. 147, 712.) The Sulphur Company owns 1,995 shares of the Brimstone's 2,000 shares of capital stock and the remaining 5 shares are owned by officials, three of whom are likewise officials of, and receive the major portion of their salaries from, the Sulphur Company. (R. 707.)

PROCEEDINGS BEFORE THE COMMISSION

The Commission proceeding was instituted August 1, 1921, by order of the Commission, issued on its own motion, directing investigation of the justness, reasonableness, and equitableness of the divisions of joint rates received by the Brimstone. (R. 336.) The joint rates in effect at the com-

mencement of the proceeding were established pursuant to the Commission's findings in *Increased Rates, 1920* (Ex Parte 74), 58 I. C. C. 220, which authorized a general increase in rates amounting to 35 per cent for this territory. (R. 124, 172, 180.) Joint rates in effect subsequent to July 1, 1922, were those established pursuant to the Commission's findings in *Reduced Rates, 1922*, 68 I. C. C. 676, recommending and authorizing a reduction of 10 per cent. (R. 93, 73.) Subsequent to said latter proceeding the divisions received by the Brimstone applicable in respect both of traffic moving over the Southern Pacific and the Kansas City Southern were as follows:

> On sulphur to gulf ports for coastwise or export movement, 24.3 cents per gross ton, equivalent to 1.085 cents per 100 pounds and to $10.85 per car of 100,000 tons capacity.
>
> On sulphur to other points, 2.7 cents per 100 pounds, or $27.00 per car.
>
> On fuel oil, 1.2 cents per 100 pounds.
>
> On brick, coal, and stone, 2.4 cents per 100 pounds.
>
> On cement, 3 cents per 100 pounds.
>
> On all other carload traffic, 3.6 cents per 100 pounds.
>
> On merchandise less than carloads, 12 cents per 100 pounds. (R. 73.)

Prior to July 1, 1922, the Brimstone's divisions were 10 per cent higher. (R. 51, 73, 93.)

The Brimstone's haul on traffic moving over the Southern Pacific is about 1.5 miles, exclusive of an

out-of-line movement necessary to reach the track scales. The haul on traffic moving over the Kansas City Southern, which requires no out-of-line movement to reach the scales, is about 7.5 miles. (R. 55.)

The Kansas City Southern and Southern Pacific were made respondents with the Brimstone. (R. 41.) The Texas Gulf Sulphur Company, owner of a sulphur mine at Gulf, Texas, 3.5 miles from Gulf Hill on the Gulf, Colorado & Santa Fe Ry., and performing its own carrier service to and from Gulf Hill, for which it received no allowance, participated in the earlier hearings, urging (1) that the Brimstone is a plant facility of the Sulphur Company and entitled to no allowance or divisions, and (2) that if it is entitled to any divisions or allowance, the amount should be limited to $4.50 per car, the switching charge prescribed in the *Tap Line Cases*, 31 I. C. C. 490, for over 1 to 3 miles. (R. 41.) The Louisiana Public Service Commission was also represented at the earlier hearings, and urged that Brimstone should be recognized as a common carrier. (R. 42.)

The Commission's first report in the proceeding, 68 I. C. C. 375, found the Brimstone to be a common carrier, but that divisions received by it were excessive and to the extent that they exceeded the cost of service, and a fair return, in effect, a rebate to the Sulphur Company. (R. 40.) In making this finding the report comments on the fact that dividends of 100 per cent in 1914, 60 per cent in 1917, and 40 per cent in 1918

were declared, and that a credit balance to profit and loss of $165,378.82 was shown as of December 31, 1920. (R. 49, 55.) Furthermore, the record showed that the company's notes issued for construction of its road and a canal, later abandoned, had been fully paid off. (R. 167, 49.) The record was held open 90 days to permit the respondents to make the necessary cost studies to arrive at reasonable divisions. Such cost studies were prepared and filed, and thereafter further hearings and oral argument were had and briefs were submitted. The report and order of the Commission on further hearing, 88 I. C. C. 62, dated March 10, 1924, found existing divisions unjust, unreasonable, and inequitable, prescribed reductions and required that adjustments be made in accordance therewith for the period subsequent to the commencement of the proceeding, namely, from August 1, 1921. (R. 57, 75.)

The Brimstone filed exceptions to the Commission's jurisdiction, questioning, as here, the Commission's authority to adjust divisions, under the circumstances obtaining in this case, for the period subsequent to the commencement of the proceeding, and alleging that it had made payments, pursuant to section 15a of the Act, of excess income received from divisions in effect prior to the adjustment. (R. 87–100.) The Brimstone also filed a petition for further hearing, and pursuant thereto the proceeding was reopened. (R. 76, 102.) The Commission's experts conducted tests and prepared cost

studies which were served upon respondents. Respondents prepared and submitted rebuttal evidence. Additional hearings were had and the views of respondents were further presented to the Commission in oral argument. (R. 102.) The Commission's third report, 104 I. C. C. 415 (R. 100), found that somewhat lower divisions on carload lots than those prescribed by its earlier order were warranted by the complete record then before it. Its final order (R. 127), dated December 14, 1925, vacated its earlier order, prescribed the following divisions, and required adjustment to the bases so fixed for the period subsequent to the commencement of the proceeding:

From August 1, 1921, to July 1, 1922

Traffic moving over the Southern Pacific: On all carloads, $7.78 per car; on merchandise, less than carloads, 11.5 cents per 100 pounds. Traffic moving over the Kansas City Southern: On all carloads, $10.00 per car; on merchandise, less than carloads, 15.5 cents per 100 pounds.

On and after July 1, 1922

Traffic moving over the Southern Pacific: On all carloads, $7.00 per car; on merchandise, less than carloads, 10.5 cents per 100 pounds. Traffic moving over the Kansas City Southern: On all carloads, $9.00 per car; on merchandise, less than carloads, 14 cents per 100 pounds.

PROCEEDINGS IN THE LOWER COURT

On February 15, 1926, the Brimstone filed a bill in the court below praying for an interlocutory injunction and a permanent injunction to set aside the order. (R. 1.) The United States, the Southern Pacific, and the Kansas City Southern were made defendants. The Interstate Commerce Commission intervened as defendant and filed answer. (R. 692.) The court, consisting of the judges above named, heard and granted the application for an interlocutory injunction and rendered an opinion (Circuit Court Judge Walker dissenting) to the effect that the Commission was without authority under the circumstances obtaining to make its order effective from the date of the beginning of the investigation. (13 Fed. (2d) 914.) (R. 130.) On May 31, 1926, the court entered its decree enjoining the Commission's order pending the further action of the court in the premises. (R. 143.) Upon submission of the case for final decree the court held (District Judge Dawkins dissenting) that the Commission order was not invalid and that the petition should be dismissed. (17 Fed (2d) 165.) (R. 322.) On January 19, 1927, the court entered its decree dismissing the bill and vacating the interlocutory injunction theretofore issued. (R. 325.)

APPELLANT'S CONTENTIONS

Appellant's contentions may be summarized as follows:

I. The Commission's order is invalid because the Commission fixed separately the Brimstone's divisions only, and because it did not investigate and determine the justness, reasonableness, and equitableness of divisions as between all carriers partcipating in the joint rates with relation to the factors named for due consideration in paragraph (6) of section 15 of the Act.

II. That part of the Commission's order adjusting divisions of joint rates for the period subsequent to the commencement of the proceeding is invalid—

(*a*) Because the statute, in so far as it authorizes the Commission to give its orders such retroactive effect, is unconstitutional.

(*b*) Because such unusual authority should, in any event, be narrowly construed and, since, it is in words conferred only in cases where the joint rates involved were "established pursuant to finding or order of the Commission," its exercise should be confined to adjusting divisions of such joint rates as have been specifically and individually established by the Commission, whereas the divisions, and adjustment thereof, herein prescribed, were out of joint rates established pursuant to Commission proceedings authorizing general rather than specific rate changes, conducted under section 15a(2).

(*c*) Because the so-called recapture clause of section 15a of the Act, requiring that a particular

disposition be made of earnings in excess of 6 per cent on property value, automatically reduced divisions to the point of reasonableness, and, since the Brimstone had made such statutory disposition of its excess income for certain past years, the Commission was without authority to order retroactive adjustment of divisions for those same years, thereby directing a different disposition of excess income than that provided for by section 15a.

III. The Commission's order is invalid because the divisions prescribed do not permit of a fair return upon the fair value of the Brimstone's property.

1. The property value base used by the Commission was improper, and no finding of the amount thereof was made.

2. The Commission's allowance for operating expenses was too low, and evidence in respect thereof for the years 1924 and 1925 was not before the Commission.

ARGUMENT

SUMMARY

I. The Commission, in fixing the divisions, gave the due consideration required by the Act to operating efficiency, revenue requirements for expenses plus a fair return, public importance, and other factors named in the Act, in respect of the carriers participating in the joint rates.

1. Where the need for action is merely the fixing of an industrial short line's division, the Commis-

sion may fix separately such division while regarding the remainder of the joint rate as a joint division or joint proportion going to the carriers participating in the traffic beyond the industrial carriers' junction with the connecting trunk line, and in such case due consideration is given to the factors named by respectively considering the adequacy with relation to those factors of the separate division for the individual needs of the industrial carrier, on the one hand, and the adequacy with relation to those factors of the remaining proportion for the joint needs of the remaining carriers, on the other hand.

2. Where the separate fixing of an industrial carrier's division results in an increased proportion going to the trunk-line carriers, due consideration of the factors named does not require the submission of the same involved cost studies and detailed evidence in respect of the thousands of miles of road operated by the trunk lines as was found practicable in separately fixing the division of the industrial line, for, on the one hand, the interests of the trunk lines and that of the public in their efficient service has been promoted by the action taken and, on the other hand, the fair return of the industrial line and interest of the public in its efficient service has been safeguarded by careful consideration given to detailed evidence.

3. In reducing the Brimstone's division and consequently fixing an increased proportion for the remaining carriers the Commission gave, with rela-

tion to the factors named, the due consideration to the Brimstone's requirements and to the joint requirements of the remaining carriers which the act called for under the circumstances obtaining.

II. The authority to adjust divisions for the period subsequent to the commencement of the proceeding conferred upon the Commission by the Act was not illegal in itself and was not exercised in an unauthorized manner.

1. Such adjustment of divisions was not retroactive in the sense that it took from the Brimstone revenue to which it was ever properly entitled.

2. The divisions and adjustment thereof ordered by the Commission were of joint rates established pursuant to findings or orders rendered by the Commission in certain general rate group proceedings, known as *Increased Rates, 1920*, 58 I. C. C. 220, and *Reduced Rates, 1922*, 68 I. C. C. 626, thereby strictly conforming not only with the letter of the divisions paragraph of the Act but to its purpose as well, which is particularly directed toward effecting distribution commensurately with individual carrier needs of revenues derived from rates established in just such general rate group proceedings, wherein aggregate carrier needs and property values constitute the prescribed rate bases and individual carrier needs are necessarily disregarded for the time being.

3. The divisions received during the proceeding were subject to adjustment by the Commission despite the fact that appellant had, for the same

years, made tentative payments into a reserve fund and to the Commission of excess income estimated by it to be subject to the so-called recapture clause of the Act, for recapture operates only against excess income shown following any such adjustment of divisions and the tentative disposition of excess income made by the carrier could be readily readjusted, particularly since the Commission had not itself as yet found and determined what amount, if any, of the Brimstone's revenues was subject to the recapture clause.

III. The Commission's order is supported by the evidence and amply provided for a fair return upon the fair value of the Brimstone's property.

1. Appellant was accorded full opportunity to submit evidence in respect of property value, and all applicable elements of value and judicially sanctioned methods of determining value were given consideration by the Commission.

2. Such adjustments as were made by the Commission in items charged to operating expenses were warranted by the evidence.

(*a*) The plant switching performed for the sulphur company necessitated close scrutiny of the costs as apportioned between common-carrier service and plant service.

(*b*) The allowance for maintenance of leased tracks was liberal.

(*c*) Annual charges to operating expense for the amortization of the investment were not warranted under the circumstances shown to exist in this case.

I

The Commission, in fixing the divisions, gave the due consideration required by the Act to operating efficiency, revenue requirements for expenses plus a fair return, public importance and other factors named in the Act, in respect of the carriers participating in the joint rates

1. Where the need for action is merely the fixing of an industrial short-line's division, the Commission may fix separately such division while regarding the remainder of the joint rate as a joint-division or joint-proportion going to the carriers participating in the traffic beyond the industrial carriers' junction with the connecting trunk line, and in such case due consideration is given to the factors named by respectively considering the adequacy, with relation to those factors, of the separate division for the individual needs of the industrial carrier, on the one hand, and the adequacy, with relation to those factors, of the remaining proportion for the joint needs of the remaining carriers, on the other hand.

What is known as the divisions paragraph of the Interstate Commerce Act, section 15(6), reads as follows:

(6) Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property,

are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance

> which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

The contention of the appellant that the Commission did not establish rates on the basis of their justness as between it and the other parties to the joint rates and did not give consideration to the factors named for consideration in the above quoted section relative to the respective operating efficiency, revenue requirements for expenses and a fair return, public importance, and status as originating, intermediate or delivering carrier of the railroads participating in the joint rates, is in part based on the grounds that the Commission's order initiating the proceeding (R. 336) called for an investigation of the Brimstone's divisions only, and that its order prescribing divisions (R. 127) fixed the divisions of the Brimstone only.

The order of investigation and that fixing divisions were worded properly. Of the individual carriers participating in the joint rates only the Brimstone's divisions were intended to be or were in fact separately fixed, the remainder of the joint rates being undivided proportions jointly going to the other participating carriers.

This handling of the situation is clearly approved in the *New England Divisions Case*, 261 U. S. 184. There the dividing point was the Hudson river, all carriers east of the Hudson having their divisions increased by a percentage taken from the joint pro-

portions of carriers west of the Hudson. The divisions of the former were separately and specifically fixed, whereas the carriers west of the Hudson were left with decreased joint proportions to be divided among them "in the same proportions as at present, or otherwise as they may agree, or failing such agreement, as may be determined by the Commission upon application therefor." In the instant case the dividing points are at the junctions of the Brimstone with its two connecting carriers. The Brimstone's divisions are separately fixed and the remaining proportions, which are increased rather than decreased, are left for voluntary division by and between the participating carriers on the other side of the junction points. It is true that in the *New England Division's case* the separate divisions of the carriers west of the Hudson may be said to have been fixed in the Commission's order by reference, but this the court points out was not essential to the validity of the Commission's action. At pages 201–202 the opinion reads:

> The duty imposed upon the Commission does not extend beyond the need for its action. If the real controversy is merely how much of the joint rate shall go to the carriers east of the Hudson river and how much to carriers west, there is nothing in the law which prevents the Commission from letting the parties east of the river, and likewise those west of it, apportion their respective shares among themselves. It is obviously of no interest to the western carriers

> how those of New England decide to apportion their share; nor is it of interest to the eastern carriers how those west of the Hudson divide the share apportioned to that territory. If on these matters the carriers interested can reach an agreement and no public interest is prejudiced, clearly, there is no occasion for the Commission to act.

If in the case quoted from immediate Commission action need not have extended beyond the fixing of the divisions east of the Hudson, equally, or perhaps more forcefully, it may be said that here the need for action did not extend beyond the fixing of the Brimstone's divisions, keeping in mind that the Brimstone is a short line, owned by the company furnishing substantially all of its traffic, and that the Commission is frequently called upon to adjust the divisions of so-called industrial carriers in order to guard against rebates and can not in all reason be expected to fix separately in each such case the innumerable divisions of the other carriers participating in the many joint rates that may be involved.

Unquestionably, therefore, the Commission followed the only practicable, and an entirely proper, method in adopting the Brimstone's junctions with its connections as a dividing point, fixing the Brimstone's divisions separately and leaving the remainders of the joint rates as joint proportions to be divided pursuant to the voluntary agreement of the carriers participating in the carriage beyond that point. It follows from this that the question,

properly raised, is as to whether the Commission did or did not give due consideration to the revenue requirements in rendering adequate service to the public and for a fair return, and other factors named, in respect of the Brimstone, on the one hand, and the other participating carriers, jointly and not separately considered, on the other hand.

> 2. Where the separate fixing of an industrial carrier's division results in an increased proportion going to the trunk line carriers, due consideration of the factors named does not require the submission of the same involved cost studies and detailed evidence in respect of the thousands of miles of road operated by the trunk lines as was found practicable in separately fixing the division of the industrial line, for, on the one hand, the interests of the trunk lines and that of the public in their efficient service has been promoted by the action taken and, on the other hand, the fair return of the industrial line and interest of the public in its efficient service has been safeguarded by careful consideration given to detailed evidence.

The Brimstone's claim appears to rest chiefly on the thought that the Commission should have had before it the same elaborate cost studies and abundant evidence in respect of the thousands of miles of road operated by the trunk-line carriers as were introduced in respect of the few miles of road operated by the Brimstone. Disregarding the fact that it was open to the Brimstone to have submitted

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any evidence relative to those other carriers which would have supported its right to a higher proportion, it seems clear that, reasonably construed, the statute does not require any such wasteful and futile expenditure of carrier time and money in fixing the divisions to be accorded an industrial line by its trunk-line connections. Because of the simplicity of its operations and its small plant, substantially correct mathematical results in respect of the Brimstone's operations could be obtained through cost studies. But it is clear that cost studies apportioning and reapportioning the operating costs of vast trunk-line systems in an effort to separate one specie of traffic from the entanglements of the other innumerable services rendered may not be resorted to with any expectation of like good results.

Clearly, where, as here, the fixing of the division on the one side of the dividing point results in an increased rather than a decreased joint proportion left for the carriers on the other side of that dividing point, less detailed consideration of the factors named in the divisions paragraph with relation to the proportion jointly available to the remaining carriers than that given to the fixing of the individual division, may constitute the due consideration required of the Commission by the statute. That this is true is shown by the fundamental purpose sought to be attained by the provisions of the Act relating to divisions.

The Transportation Act, 1920, revamped the Interstate Commerce Act chiefly with the purpose of aiding in the building up of an adequate transportation service and sought to accomplish that result without burdening the commerce of the country with excessive rates. The weak as well as the strong roads were essential to the country's transportation, and yet, due to their lesser efficiency, the revenue needs of the weak roads for a given amount of service were greater than the needs of the strong roads. These greater needs of the weaker roads could not be met, however, by a higher grading of their rates, because traffic would thereby be diverted to the lower rates of the stronger roads and congestion would follow. They could not be met by uniform rates established at the high level of the needs of the weakest link of the transportation system, because such rates would be more than adequate for the other carriers and burdensome to commerce. The Act prescribes the adjustment of rates to be based in effect on the requirements of the carriers as a whole, or as a whole within designated rate groups. Economic considerations demanded such rates because they mete out exact justice as between the carriers considered as a whole and the shipping public. But, within the ranks of the carriers the strong, under such average rates, would still be earning more than a just return while the revenue of the weak in many instances would not offset their operating expenses. The Act meets this contingency by provisions intended to bring

about a distribution of earnings derived from the uniform rates as fixed, more nearly commensurate with the needs of the individual carriers. In part this is to be effected through the recapture provisions (Section 422, Transportation Act, Section 15a, Interstate Commerce Act) and in part through the Commission's authority to fix divisions of joint rates as between the participating carriers. *New England Divisions Case*, 261 U. S. 184, 191; *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456.

If, then, the Commission's investigation of the Brimstone's situation had developed the fact that it should be classed as a weak road requiring a larger share of the joint rate for its continued operation than its share of the service rendered would otherwise have warranted, it is apparent that the importance of its continued operation in the public interest would have become paramount (*Dayton-Goose Creek Ry.* v. *U. S.*, *supra*, p. 477; *New England Divisions Case*, *supra*, p. 195), and that, moreover, before allowing it a division, disproportionate to the service rendered, out of the proportion of the other carriers, even the most remote parties to the innumerable joint rates should have been made respondents and close and careful consideration should have been given to the possible results of reduced earnings upon those other carriers along the line indicated by the factors named in the Act, namely, whether the reduction would cut their net income below a fair return and even endanger their

continued operation in the public service, or whether it could be, to a large extent, offset by more efficient operation. However, Commission action need not extend beyond the need therefor (*New England Divisions Case, supra,* p. 201), and early in the Commission's investigation it was disclosed that the Brimstone's division was not inadequate but, on the contrary, so excessive that the Commission, in its first report, felt constrained to declare that they, in effect, amounted to rebates to the parent sulphur company. Since the change in divisions indicated by the evidence was toward a decrease in the Brimstone's proportion and a corresponding increase in that of its connections, the situation called for close consideration of the factors named in the Act with relation to the Brimstone in order to insure that its fair return and continued operation in the public interest would not be endangered, but, in so far as the remaining carriers were concerned, the due consideration of said factors required by the Act was not so exacting, since neither the public interest in their continued operation nor their fair return could be endangered by increased revenues.

The purpose of Congress in naming said factors for the due consideration of the Commission was not, as appellant seems to think, to assure each carrier of a share which would be equitable, regarded solely as between it and other participating carriers regardless of whether that share would yield it more than a fair return, but was, on the

contrary, primarily directed toward effecting a distribution of revenues commensurate with the needs of individual carriers, limiting the strong to a fair return and aiding the weak to more efficient operation in the public interest, even though, in so doing, certain carriers might be given divisions "larger than justice merely as between the carriers would suggest." *United States et al.* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274. Accordingly, once the Brimstone's continued and efficient operation in the public interest and its fair return on property value was provided for, its right could not be enlarged by a consideration of the factors named with relation to the other participating carriers. Certainly the naming of said factors for consideration was not intended to vest a carrier with the right to revenues greater than needed, both from the standpoint of fair return and from the standpoint of the public interest in its transportation service.

> 3. In reducing the Brimstone's division and consequently fixing an increased proportion for the remaining carriers the Commission gave, with relation to the factors named, the due consideration to the Brimstone's requirements, and to the joint requirements of the remaining carriers which the act called for under the circumstances obtaining.

Based upon exhaustive consideration of a large volume of detailed evidence, as will later be shown,

the Commission fixed divisions for the Brimstone which provided ample revenues, under efficient management, to meet the expenses of rendering proper service to the public and to yield a fair return upon property value. These requirements of the Brimstone were balanced against those of the remaining carriers, jointly considered, in such manner, as to ensure with practical certainty justice as between the carriers and the public interest in an adequate transportation service.

It is true that the same close scrutiny as was given the Brimstone's operations with relation to the factors named in the Act was not given to the operations of the trunk line carriers, but this was not necessary since their interests and that of the public in their efficient operation was promoted rather than endangered by the increased proportion of the rates accorded to them. Even if such close scrutiny had been given and had disclosed that that proportion showed a surplus above the needs of the trunk line carriers that fact would afford grounds, not for giving the Brimstone a greater division, but for reducing the joint rates. However, expensive cost studies in respect of the trunk lines could not be justified for that purpose either for that would *place the cart before the horse*. Division proceedings do not lead up to, but are, on the contrary, an outgrowth of, rate proceedings. As stated in the *New England Divisions case*, *supra*, p. 196, wherein as here the earlier rate proceeding was *Ex Parte 74*, *supra*, an order in a later divisions

proceeding may properly be regarded as supplemental to or a modification of the order in the earlier proceeding fixing the joint rates. The instant divisions proceeding, then, being in the nature of a supplemental proceeding, the Commission was warranted in considering that, to the extent that the joint rate fixed in the earlier proceeding correctly measured the aggregate needs of all carriers, parties to the rate, the remainder of that joint rate left after it had accurately fixed the Brimstone's proper division, correctly measured the joint needs of the remaining carriers.

We are mindful of appellant's claim that the finding of reasonable aggregate rates in *Ex Parte 74* does not necessarily determine the reasonableness of any particular rate. Nevertheless two things would seem to offset that claim even if conceded to be true: (1) That appellants and the other participating carriers accepted the rates involved here as reasonable for the joint service by establishing them without protest pursuant to what was a recommendation, not an order, contained in the Commission's findings rendered in *Ex Parte 74;* and (2) that the issue in the divisions proceeding was as to the proper division to be made of a given whole, already fixed in the rate proceeding, creating, it would seem, at least for the purposes of the supplemental divisions proceeding, a presumption that the given whole correctly measured the joint needs of all among which it was to be divided. From that it followed that, since the division was

to be made, primarily based on the operating needs of the respective carriers and the public interest in those operations, the accurate fixing on such basis of the division of one carrier left a remainder which presumptively represented the needs of the remaining carriers. Detailed consideration of the factors named in the act with reference to the connecting carriers could not, on the one hand, vest the Brimstone with rights to a division greater than needed for its fair return and efficient operation in the public interest, nor, on the other hand, justify a reduction of that division below its needs for efficient operation and a fair return. *U. S.* v. *Abilene & Southern Ry.*, 265 U. S. 274, 285; *Dayton Goose Creek Ry.* v. *U. S.*, 263 U. S. 456, 477. It was not necessary to separately fix the individual divisions of the Brimstone's connections, for the Commission's duty does not extend beyond the need for its action, *New England Divisions case, supra*, pages 201, 202. Those separate divisions may be fixed when occasion arises and if the needs of the Brimstone's connections prove to be greater or less than the balance of the joint rate left them after the fixing of the Brimstone's division that will give cause, not for disturbing the Brimstone's division of the joint rate as it now exists, but for instituting a proceeding wherein the level of the total joint rate may be properly considered.

All that is here contended is that, because of the supplemental nature of the divisions proceeding, the accurate fixing of this one road's division leaves

a balance that presumptively—not conclusively—represents the proper needs of the remaining carriers, jointly considered. The existence of a presumption is sufficient to show the due consideration required by the act of the factors named with reference to the vast trunk-line systems where, as here, the need was only for the fixing of what was tantamount to a mere switching charge.

The above might not be true if, as in the case of *United States* v. *Abilene & Southern Ry. Co., supra*, the proportion going to the remaining carriers had been reduced thereby endangering their fair returns and adequate service to the public. But here the interests of the remaining carriers and that of the public in their service was promoted by an increased proportion and there was, therefore, no need for further action to protect their interests and no warrant for a large outlay of carrier revenue in preparing detailed evidence of their costs. Moreover, such due consideration of the factors named in the Act is otherwise disclosed by the record.

Existing division sheets showing divisions of all joint rates in which the Brimstone participated were before the Commission and an index to the tariffs of such rates. (R. 754, 336 (fol. 452), 718, 177.)

The cost studies showed the volume of traffic moving and its distribution between the Southern Pacific and Kansas City Southern.

Past division sheets back to 1906 were in the record showing that consideration was given to the

proportions considered just and equitable in the past for the Brimstone's needs, on the one hand, and the trunk lines, on the other hand. (R. 754–765, 716.)

There was testimony as to the divisions accorded the Brimstone in 1919 by the Director General, who then operated the Southern Pacific and Kansas City Southern and as to conferences with him relating thereto. (R. 170–173, 189–190.)

There was testimony of Southern Pacific and Kansas City Southern officials showing that, in their fixing of the Brimstone's divisions and divisions of short lines generally, competition—that is to say, the getting of the business—was the controlling element rather than the costs of the service, and that competition between the two trunk lines for Brimstone business was keen, from which the inference naturally followed that the divisions given to get that business were high and the proportions left for trunk-line needs were low for the service rendered. (R. 174–179, 182–185.)

The *New England Case* shows that it is not necessary for the Commission to announce that it had given due consideration to the factors named in the statute if such consideration should be normally and naturally presumed from its action in the premises. At page 202, referring to the fact that the divisions of carriers west of the Hudson were fixed by reference and provisionally only, the opinion reads:

> It is urged that this disposition demonstrates failure by the Commission to consider the several factors which the statute declares shall be taken into consideration in determining divisions. But this is not true. This feature in the order indicates rather that the Commission has considered the question, concluded that the apportionment by the western lines of their share on existing proportions was not inconsistent with the public interest; and that in the absence of complaint, it might be assumed to be satisfactory to all parties.

The very fact that the effect of the Commission's order was to give a larger proportion to the trunk-line carriers shows that the Commission gave consideration to the needs of, and public interest in, those roads.

Furthermore, the Commission declared that the divisions were in effect rebates, commenting on the fact that all notes issued for the construction of the road and a canal, later abandoned, had been discharged; that dividends of 100 per cent, 60 per cent and 40 per cent, had been declared in 1914, 1916, and 1917, respectively, and thereafter a surplus of $165,000 was shown at the beginning of the proceeding. (R. 55, 49, 167.) A rebate effected by giving an excessive division to a shipper-owned carrier necessarily means that the remaining carriers parties to the joint rates are relinquishing their proper shares of the rates based on their respective services.

And finally it is clear that the Commission, in declaring the divisions to be rebates, must have given due consideration to the final factor named in the act, namely, to the fact that the shipper-owned feeder or tap line was, as to sulphur, an originating carrier and the trunk lines intermediate or delivering carriers; and to the fact that the reverse was true as to inbound traffic.

II

The authority to adjust divisions for the period subsequent to the commencement of the proceeding conferred upon the Commission by the Act was not illegal in itself and was not exercised in an unauthorized manner

1. Such adjustment of divisions was not retroactive in the sense that it took from the Brimstone revenue to which it was ever properly entitled.

The authority conferred by Congress to adjust divisions, dating from the commencement of a proceeding is freely spoken of as being retroactive. But it is not retroactive in the sense that it takes from the Brimstone revenue to which it was ever properly entitled. Section 1 (4) of the Act makes it the duty of the carriers to establish just, reasonable, and equitable divisions. The Commission found that the Brimstone's divisions were unreasonable and, to the extent of the excess, in effect rebates to the parent sulphur company. (R. 56.) Throughout the Act rebates are denounced. Can it be said that the appellant is vested with inalien-

able rights to excess revenue received by reason of its failure in its statutory duty?

Appellant urges that the divisions in effect at the commencement of the proceeding, August 1, 1921, can not properly be regarded as inequitable, because they were given legal sanction by section 208 (b) of the Transportation Act, 1920, which provided that divisions of joint rates in effect February 29, 1920, should continue in effect until changed by mutual agreement or by state or federal authority. This provision is a corollary to section 208 (a) providing that rates in effect February 29, 1920, shall continue in effect until changed by state or federal authority or pursuant to authority of law. But the Brimstone's divisions, in effect at the commencement of the proceeding, were not those in effect as of February 29, 1920, for meanwhile the whole (namely, the joint rates), of which the divisions were a part, had been changed pursuant to findings made in *Ex Parte 74, supra,* and thereafter corresponding changes had been made in divisions. (R. 124, 172, 180.) Although based on the same proportions as formerly the new divisions were "changed" divisions of "changed" joint rates within the wording of the Act and within its intent as well. Such sanction as was given by the Transportation Act to existing divisions was an emergency measure designed to prevent general disruption of the rate structure following federal control. It was never intended to constitute such approval of the proportionate distributions then being made

of the revenues from joint rates as would afford legal sanction, if based on the same proportions, of new divisions of new joint rates.

Furthermore, the situation in this case is like that involved in the *New England Divisions Case, supra.* Since the general increase in the joint rates, herein involved, effected by *Ex Parte 74, supra,* took care of the needs of participating carriers considered as a whole only, the later divisions proceeding, by making the contemplated distribution of revenues as between the carriers, had the effect of completing the work which, except for practical reasons, should have been done in the one proceeding. The later divisions order is in effect supplemental to or a modification of the joint-rate order. *New England Divisions Case, supra,* p. 196. Since the Commission might have made such distribution in the one proceeding, the fact that it was done, dating from the commencement of a later supplemental proceeding, would seem to give cause for complaint only by carriers who would have benefited had the distribution been still earlier effected.

Recapture of excess earnings, as well as the prescribing of divisions, is relied upon by the Act to bring about the desired distribution of revenues derived from joint rates. *New England Divisions Case, supra,* p. 191. Recapture necessarily operates from the date of the establishment of the rates producing the revenues, and it has been held not to be unlawful. *Dayton-Goose Creek Ry.* v. *United*

States, 263 U. S. 456. It would seem to follow that Congress could have consistently authorized the adjustment of divisions even back to the date of the joint rates involved. The fact that it exercised moderation in this regard can not be urged against the validity of its action.

> 2. The divisions and adjustment thereof ordered by the Commission were of joint rates established pursuant to findings or orders rendered by the Commission in certain general rate group proceedings, known as *Increased Rates, 1920*, 58 I. C. C. 220, and *Reduced Rates, 1922*, 68 I. C. C. 626, thereby strictly conforming not only with the letter of the Act but to its purpose as well, which is particularly directed toward the distribution commensurately with individual carrier needs of revenues derived from rates established in just such general rate group proceedings, wherein aggregate carrier needs and property values constitute the prescribed rate bases and individual carrier needs are necessarily disregarded for the time being.

Because of its alleged retroactive nature appellant claims that paragraph (6) of section 15 should be strictly construed. The strict construction contended for is that Congress intended that adjustment of divisions from the commencement of a proceeding should be made only where the joint rates have been established pursuant to paragraphs (1) and (3) of section 15, after full and specific hearing in respect of each individual rate, as distinguished

from cases where the joint rates have been established pursuant to paragraph (2) of section 15a, authorizing general rate adjustments. This, it is urged, is shown by the fact that said paragraph (3), while prescribing the manner of fixing joint rates thereunder, at the same time authorizes the fixing of "the divisions of such rates, fares, or charges as hereinafter provided," the thought apparently being that the words "hereinafter provided" so links the later divisions paragraph, paragraph (6), with said paragraph (3) that divisions and the adjustment thereof could only be ordered out of joint rates fixed pursuant to paragraph (3).

It will be noted that in the phrase of paragraph (3), relied upon by appellant, it is the divisions of such rates which are to be fixed as hereinafter provided. Therefore appellant's rule that the Commission's authority over divisions under paragraph (6) is thereby restricted to the "divisions of such rates," individually established under paragraph (3), if applied at all, must be applied in respect of divisions *in futuro* as well as in respect of the adjustment of divisions. The divisions involved in the *New England Divisions case, supra*, were future divisions and they were of joint rates established pursuant to *Ex Parte 74*. Since they were approved by the court, it must be either concluded that the joint rates, established pursuant to Ex Parte 74, were established in the manner contemplated by paragraph (3), or that the phrase in paragraph (3), relied upon by appellant, is not

intended as a restriction upon the Commission's authority under the later paragraph (6). Undoubtedly when joint rates have been established pursuant to paragraphs (1) and (3) the divisions thereof must be fixed in accordance with the later division paragraphs, but it does not at all follow that those are the only divisions over which authority is given. Paragraph (6) shows a clear intent to authorize the fixing of future divisions in respect of joint rates, howsoever established, and limits the so-called retroactive adjustment only to the extent that the joint rates must have been "established pursuant to a finding or order of the Commission"; that is to say, they must have been in some manner authorized by the Commission.

The Commission has uniformly held that it could order adjustment of divisions, dating from the commencement of a proceeding, of joint rates established pursuant to its findings in *Ex Parte 74; New York Dock Ry.* v. *B. & O.*, 89 I. C. C. 695; *Marion & Eastern R. R. Co.* v. *C. & E. I. R. R. Co.*, 96 I. C. C. 402.

The joint rates herein involved were authorized in *Increased Rates, 1920* (*Ex Parte 74*) and *Reduced Rates, 1922, supra*, and were established by the carriers pursuant to the Commission's findings and authorizations in those proceedings. This is shown by the Commission's report (R. 124), by the testimony of witnesses (R. 172, 180), and by the admission of appellant (R. 92–94 and Brief 33–48). We are not contending, as appellant seems to think,

that the rates were established by the Commission. We contend that they were established by the carriers "pursuant to a finding or order of the Commission." The situation falls strictly within the terms of the statute. The condition precedent to the so-called retroactive adjustment of divisions is not that the joint rates must have been ordered by the Commission in the sense of having been required, but that they shall have been "established pursuant to a finding or order of the Commission." Accordingly compliance therewith is effected whenever rates are established pursuant to authorization, as well as requirement, contained in the Commission's findings or orders. Such rates, although not required, are nevertheless not voluntary in the sense of having been initiated by the carrier and, in the absence of protest, having become effective without formal investigation and affirmative approval of the Commission, for here, based upon its own findings, after investigation, the Commission authorized the rates and pursuant to such findings and authority they were established by the carriers.

Not only does the situation fall strictly within the words of the statute but it is also clear that it is just the situation in respect whereof Congress particularly intended that adjustment of divisions should be made dating from the commencement of the proceeding. Prior to the Transportation Act, 1920, the Commission might, in the case of tap lines, remove discriminations effected through preferential divisions, but aside from this the Com-

mission's guide in fixing divisions was solely the justness, reasonableness, and equitableness thereof as between the carriers participating in the joint rates. The Transportation Act recognized the public interest in an efficient transportation service by naming certain factors for the Commission's consideration (Sec. 418, Transportation Act, 1920; Section 15(6), Interstate Commerce Act), the effect whereof is to authorize, in cases where the public interest would be served, the giving to a weaker road of a division larger than justice merely as between the parties would suggest. *United States* v. *Abilene & So. Ry.*, 265 U. S. 274, 285. This shows that the present divisions paragraph is inseparably linked with that other paragraph (Sec. 15a(2)) added by the Transportation Act, providing for the adjustment of rates based on the aggregate needs of the carriers as a whole, or as a whole in designated rate groups, because, as shown above, the paring down of rates to the average needs of the carriers would endanger the continued operation of the less efficient carriers unless such distribution of the revenues derived as that contemplated by the new divisions provision were provided for. *New England Divisions Case, supra,* 191. In view of this close relationship, it seems inescapable that Congress intended to authorize such adjustment of divisions with especial reference to joint rates fixed pursuant to findings or orders rendered in just such general or rate group proceedings as were conducted in *Ex Parte 74* and

Reduced Rates, 1922, supra, particularly since it must have been foreseen that the innumerable divisions involved in a general proceeding could not be immediately fixed and that, accordingly, the distribution of revenues as between carriers, which theoretically should take effect contemporaneously with the effective date of the rate, would in practice be delayed. The adjustment back to the commencement of such a supplemental divisions proceeding is clearly designed to offset in a measure such delay.

Moreover, it is by no means conceded that the carriers were not accorded full hearing in respect of the joint rates established pursuant to *Ex Parte 74* and *Reduced Rates, 1922.* In the *New England Divisions Case* the court, in answer to the carrier's contention that the provisional character of the order demonstrated that the hearing had not been a full one, said at page 201:

> A hearing may be a full one, although the evidence introduced does not enable the tribunal to dispose of the issues completely or permanently; and although the tribunal is convinced, when entering the order thereon, that upon further investigation some changes in it will have to be made.

Continuing, the court draws an analogy between that case and *Ex Parte 74,* as follows:

> To grant under such circumstances immediate relief, subject to later readjustments, was no more a transfer of revenues

pending a decision than was the like action, in cases involving general increases in rates, a transfer of revenue from the pockets of the shippers to the treasury of the carriers.

The rate changes found proper in *Ex Parte 74* and *Reduced Rates, 1922*, were applied to the rate structure generally, and therefore can not be said to have disposed of all issues completely and permanently. If, however, the general change did not fit the particular case, it was left to the carriers to apply for further adjustment of particular rates. On petitioner's own showing the changes authorized were not protested in respect of the joint rates here involved but were established pursuant to the permission given. (R. 93.) It can not, therefore, be consistently urged that the hearing was inadequate for the purpose sought to be attained in proceedings held pursuant to section 15a. It is not necessary to show that the kind of hearing contemplated by paragraphs (1) and (3) of section 15 was had in respect of the individual rates, for the condition precedent to the so-called retroactive adjustment of divisions is only that the joint rates must have been "established pursuant to a finding or order of the Commission." The joint rates under consideration were so established. They were established pursuant to findings rendered in section 15a proceedings and based on aggregate needs of the carriers, in respect whereof, as pointed out above, the divisions paragraph is particularly directed in order that the revenues from such average rates

may be distributed in closer conformity with the needs of individual carriers.

Before passing to the next chapter we desire to take issue with the statement on page 10 of appellant's brief that it was unnecessary for the lower court in granting the preliminary injunction to discuss any other grounds of illegality than those set out in paragraph II of appellant's brief. The court did base its preliminary injunction on the grounds urged in said paragraph II against the validity of the Commission's action in adjusting divisions back to the commencement of the proceeding. But we submit that the court erred in restraining solely on such grounds an order of the Commission in toto, which involved future divisions as well as the adjustment of divisions back to the commencement of the proceeding, and that this well demonstrates the fact that the court at the time it issued the preliminary injunction had not had adequate time to give full consideration to the many ramifications of this case.

3. The divisions received during the proceeding were subject to adjustment by the Commission despite the fact that appellant had, for the same years, made tentative payments into a reserve fund and to the Commission of excess income estimated by it to be subject to the so-called recapture clause of the Act, for, recapture operates only against excess income shown following any such adjustment of divisions and the tentative disposition of excess income made by

the carrier could be readily readjusted, particularly since the Commission had not itself as yet found and determined what amount, if any, of the Brimstone's revenues was subject to the recapture clause.

The Brimstone contends that the provisions of section 15a requiring it to pay one-half its excess net income, over six per cent of property value, to a reserve fund and to pay the remaining one-half to the Commission for the purposes therein outlined, automatically reduced its divisions to the point of reasonableness, and, since it had for certain years subsequent to the commencement of the proceeding made such disposition of its excess income, the Commission was without authority to reduce and adjust divisions for those same years because that would, in effect, be requiring a disposition of excess income, through the authority reposed in the Commission by section 15(6), different and inconsistent with the disposition of excess income provided for by section 15a.

The Commission's action in reducing divisions and in adjusting them for the period of the proceeding was not inconsistent with the purpose of the recapture clause. Certainly, in the case of rates or divisions for the future which have been reduced by the Commission, recapture would not operate against revenues that would have been earned by the carrier if the pre-existing rates and divisions had not been reduced. Clearly, the purpose of section 15a is the same in respect of reductions of

divisions effective from the commencement of the proceeding, namely, that recapture should operate against the reduced revenues and not against revenues derived from divisions which have been disapproved by the Commission and ordered to be equitably adjusted between participating carriers.

This evident purpose of section 15a is in nowise changed by the fact that the Commission, in order to effect tentative compliance with the recapture clause pending the unavoidable delay incidental to completing property valuations of the carriers, instructed the carriers to submit annual returns showing their own estimates of excess income and admonishing them to make disposition of the excess so shown in the manner provided for by the Act. The amount of such excess income is necessarily tentative until the Commission has itself determined the carrier's property valuation, as provided for by section 15a (4) and (6), and presumably until it has scrutinized, and adjusted or approved, the carrier's figures relating to operations. This is apparently admitted by the Brimstone. (R. 96.) Such determination of value and adjustment of operating accounts have not as yet been made. (R. 124, 96, and Brief 62, 63.)

Clearly no insuperable difficulty exists, either in readjusting in accordance with facts as finally determined the one-half of estimated excess income held by the carrier in a reserve fund or the one-half paid in to the Commission. The latter, it is true, has been placed in the custody of the Treasury De-

partment, but the Comptroller General has rendered opinion to the effect that the Treasury Department's authority over funds so deposited with it by the Commission extends no further than to see to it that withdrawals are made on proper requisitions, and to the further effect "that there could be no interference by the Secretary of the Treasury with the discretion and authority of the Commission in the administration of the fund." *Decisions of the Comptroller General*, Vol. 2, July 1, 1922, to June 30, 1923, page 360.

In the case of *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456, this court upheld the validity of the recapture statute and the resulting authority of the Commission to order carriers to make returns of excess income. That the court was not passing upon the question as to whether payments of excess income, based on the estimates in such returns, were or were not final payments is shown by the fact that it makes clear that the only order of the Commission involved in the suit was that directing the carrier to make returns. The admonition to the carriers to make payment of the excess income shown which accompanied that order is separately referred to as a request. (Pp. 474–475.) The suit was instituted under the Urgent Deficiencies Act to set aside an order of the Commission. Accordingly, since there was no order for payment of excess income, the question of the finality of the payments made was not involved or

passed upon. *Los Angeles Valuation Case*, 273 U. S. 299.

III

The Commission's order is supported by the evidence and amply provided for a fair return upon the fair value of the Brimstone's property

The remainder of this brief deals with the issues relative to the sufficiency of the evidence and as to whether or not the divisions prescribed permit of a just return upon fair property value.

The Commission's first and second reports and the record discloses that there was submitted at the earlier hearings evidence showing, among other things—

The physical operations of the railroad in and about the plant of the sulphur company and at its junctions with the Southern Pacific and Kansas City Southern (R. 145–152, 708);

Its corporate relations with the sulphur company (R. 707, 145, 153–157);

The benefits of its service to the community as well as to the sulphur company (R. 152);

Its equipment and other property, original and reproduction costs thereof and tax assessment valuations (R. 708, 709, 739, 353, 615, 722, 738, 739, 185);

Its balance sheet, August 31, 1921, and operating accounts for a period of years (R. 722, 724, 731, 507, 515, 619);

Kinds, volume, and movement of traffic (R. 47, 48, 712, 726, 658, 736, 741);

Local tariff and index to tariffs concurred in (R. 188, 336 (fol. 445, 449), 719);

Division sheets showing existing divisions of all joint rates in which the Brimstone participated (R. 754, 336 (fol. 452), 718, 177);

Division sheets showing divisions of joint rates for period subsequent to 1906 (R. 754–765, 716);

Record of conferences with United States Railroad Administration in fixing existing divisions (R. 170, 189, 712, 47);

Testimony of railroad officials relative to matters considered when fixing divisions accorded to short lines (R. 170–185); and

Cost studies based on actual test made on the ground (R. 59, 337, 343, et seq.).

Subsequently and prior to the final hearings Mr. Elmore and other experts of the Commission, in conjunction with representatives of the Brimstone, conducted a seven days' test and prepared cost studies based thereon. (R. 102, 255 et seq.) These studies were served upon respondent railroads and at the hearings rebuttal testimony and exhibits were introduced. (R. 589, 615, 619, 657, 661, 665, 671, 675, 678.)

The manner of conducting the tests and the scheme of the cost studies are fully outlined in the Commission's second and third reports (R. 58, 102) and will not be repeated here.

1. Appellant was accorded full opportunity to submit evidence in respect of property value, and all applicable elements of value and judicially sanctioned methods of determining value were given consideration by the Commission.

The Brimstone asserts that the Commission used as a basis of property value the book investment cost for 1923, without finding of value as provided by section 19a of the Act, and without giving due, if any, weight to increased cost of construction prevailing since 1914, in disregard of reproduction cost figures for 1921, 1922, and 1923, submitted by the Brimstone. The Brimstone also contends that the Commission, in its estimate of value, did not include a proper amount for working capital and entirely disregarded going-concern value.

The allegation that the Commission made no finding of value as provided in section 19a probably requires no answer. The Commission's work would practically come to a full stop if it were required to postpone action in respect of every carrier whose property value remained undetermined as provided by section 19a. The right of full hearing does not require that this section be first complied with. In the *New England Divisions Case*, 261 U. S. 184, the court said, at page 200:

> A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and

law, of the step asked to be taken. The Commission recognized, and observed these essentials of a full hearing.

There is no basis for the assumption that the Commission reached its decision entirely upon book cost value or entirely upon evidence of value for any one year. The cost study of the Commission's experts was based on the Brimstone's investment-cost figures for 1923. The Commission's final report shows that it gave consideration not only to that evidence (R. 115) but also to the reproduction-cost figures which admittedly were before it for that and earlier years (R. 118). All of the Commission's reports show that the Brimstone's evidence was not disregarded but, on the contrary, was discussed and considered very fully in connection with other evidence bearing thereon which was before the Commission. (R. 49, 66, 118.) That the Commission did not disregard enhanced cost of construction is, in addition, shown in its final report where, after commenting on the fact that there was only a 10 per cent difference between actual investment as shown by the Commission's experts and the Brimstone's figures of cost of reproduction new, it is remarked that by far the larger proportion of cost in both cases represents equipment, practically all of which was renewed at the present higher basis of costs. (R. 119.) That the Commission has not based its conclusions exclusively on the book cost used by its own experts or the cost figures for any one year, but, on the contrary, has taken all the

evidence into careful consideration, is further shown by the fact that the divisions prescribed by the Commission are in excess of the costs of the service shown reasonable by the cost studies of the Commission's experts. (R. 116, 127.) In the *New England Division Case, supra,* the court, at pages 203 to 204, comments upon a like contention that the Commission's action was without evidence or in disregard of evidence, as follows:

> That the evidence was ample to support the order made, is shown in the opinion of the lower court, 282 Fed. 306, 308, 309, and in the reports of the Commission. To consider the weight of the evidence, or the wisdom of the order entered, is beyond our province.

Appellant does not charge that the Commission made no allowance for working capital. It claims only, and without giving detailed reasons therefor, that the amount allowed was improper. The very full discussion of this contention contained in the Commission's final report shows ample justification for the rejection of the amount estimated by appellant as necessary for working capital. (R. 114–115.) That report also shows as incorrect appellant's claim that the Commission disregarded going-concern value. Although the Commission considered that because of elements peculiar to the Brimstone's individual situation it had no going-concern value in the sense that ordinary businesses have such value, nevertheless it remarked that

"Such going-concern value as may represent an asset has been included, we believe, in the figures dealing with the cost of reproduction new less depreciation." (R. 120–121.)

2. Such adjustments as were made by the Commission in items charged to operating expense were warranted by the evidence.

The Brimstone, in connection with its general allegation that the divisions fixed by the Commission do not yield revenues adequate to meet operating expenses plus a fair return, particularly charges that the Commission failed to investigate operating expenses for the year 1922 and that there was no evidence before it in respect of operating expenses for the years 1924 and 1925 and no evidence of the number of cars handled during the year 1925.

Statements of operating expenses for a period of years, including the year 1922, were before the Commission. (R. 507, 665, 343.) The bases upon which the various items were charged were also before the Commission; for example, the percentage charged on the books to current depreciation, the arrangements between the Brimstone and the sulphur company for the payment of the salaries of joint officials, maintenance of joint offices in New York, maintenance of track and repair of equipment done by sulphur company for account of the Brimstone, and special studies in respect of engine service, which although properly plant service was charged to the carrier. (R. 63–69, 104–111.) It is true that the Brimstone's cost study and that of the

Commission's experts were based on 1920 and 1923 operations, respectively, and that the Commission's discussion of adjustments properly to be made, therefore, related particularly to those years. It does not follow from this, however, that the Commission failed to give consideration to 1922 operating expenses in connection with the evidence bearing upon the practice of the carrier in determining operating charges.

The allegation that operating expenses for 1924 and 1925 were not before the Commission is correct. The seven-day test of work performed by the Brimstone, on which the last cost study was based, was conducted in May, 1924, and naturally the 1923 operating expenses were the latest full year's operating expenses then available for use in connection with the cost study. When analyzed the basis of appellant's contention in this particular appears to be that the Commission must see to it that the evidence in a case is brought down to the very day of its order. This would assume that, in the case of each and every delay in rendering decision, howsoever occasioned, the record must be supplemented, perhaps entirely duplicated, to exactly reflect the immediate circumstances and conditions under which the carrier's operations are then being conducted. Any such practice is, of course, out of the question. It was not unreasonable to regard the operating expenses for the years 1920, 1921, 1922, and 1923 as typical of what might be expected for the two succeeding years. Further-

more, if the operating expenses for that period of years had shown a marked trend, upward or downward, that trend could have been allowed for in the Commission's decision.

Appellant's brief, page 53, claims that the divisions ordered by the Commission, when applied to the number of cars moved during 1923, would yield a total revenue of $167,069.50, as against operating expenses plus a fair return upon property value of $167,877.07, which it is alleged the Commission found the Brimstone was entitled to receive for the same year. It is noteworthy that the difference is only $807.57 and is after giving effect to a fair return on property value; that, moreover, the instance cited is confined to one year, whereas other years may well have made up the difference. Regulation is designed only to meet average conditions. It can not be expected to result in precise mathematical justice at the end of each calendar year. But aside from this, appellant's reference to the Commission's report (R. 104) shows that the 1923 operating expenses referred to were those submitted as proper in the cost study of the Commission's experts. The Commission made no finding in respect of the total amount submitted by its experts. On the contrary, some items going to make up that total were rather severely criticised, notably those based upon an apportionment of expense as between plant and carrier's service. (R. 116, 118.)

(a) The plant switching performed for the sulphur company necessitated close scrutiny of the costs as apportioned between common carrier service and plant service

The difference between the total of railway operating expenses claimed by the Brimstone and those found proper by the Commission's experts has its source largely in the different classifications made of the Brimstone's services as between carrier and plant services. The Commission's first report, citing the *Tap Line Cases*, 234 U. S. 1, as authority, observes that although the Brimstone is a common carrier its intimate affiliation with the Sulphur Company necessitates close scrutiny of its operations in order to guard against rebates. (R. 54.)

The Brimstone in its earlier cost studies separated operations into three zones, namely, zone 1 for Southern Pacific business, zone 2 for Kansas City Southern business, and zone 3 used in service to both trunk-line connections. The cost studies of the Commission's experts added a zone covering services within the plant and also made further separations of territory in order to more accurately allocate services between Southern Pacific and Kansas City Southern business. At the time when the proceeding was instituted the Sulphur Company was doing its own plant switching, but under an agreement made in 1923 the Brimstone assumed this service and also the maintenance of certain plant tracks. (R. 720, 256, 104.) This entailed the operation of an additional locomotive, and as a result thereof necessitated an apportionment of the wages

of its crew and fuel expense between plant and carrier service. Wtih regard to the apportionment of service as made by the Commission's experts, the Brimstone, although it took exception generally to the results reached, appears to have found only one concrete element on which it could base any complaint, namely, the fact that locomotive time, as spent in shifting cars from the hold tracks, so called, to the loading tracks, was classified as plant service. Mr. Glover, Division Superintendent of the Southern Pacific, and a Brimstone witness, stated that the allocation made in his exhibits as between plant and carrier service differed from the Commission's allocations only in that he classified this particular service as carrier service. (R. 291.) Yet it was later brought out through this witness that it was because of plant convenience that the loading tracks were not made large enough for the spotting of a full engine haul of cars at one time, which fact necessitated the use of hold tracks for the remaining cars of a full engine haul. (R. 123, 296–297.)

That the separation of carrier and plant service in the cost study of the Commission's witnesses was made upon a basis eminently fair to the Brimstone is illustrated by mention of certain instances. The Brimstone's gondola cars were used in handling sulphur from storage bin to conveyor pit for loading into box cars. The large locomotive was kept at the plant weighing scales while weights were adjusted to box-car capacity. Such services are properly attributable to the plant and should have been

so charged, particularly in view of the high maintenance costs charged to equipment by the Brimstone. Yet the Commission's expert testified that no deduction was made on account thereof. (R. 273–274, 117.) The small locomotive and its crew were kept on duty at the plant on Sundays. No sulphur was loaded on Sundays, and from a carrier standpoint there was no necessity for duty on that day. (R. 261.) Nevertheless, the cost study of the Commission's experts included 123 minutes of Sunday titme in carrier service. (R. 262.) The Commission, in its first report (R. 47), found that the back-haul movement to the track scales, which about doubled the movement to the Southern Pacific connection, should not be included in computing cost service, which finding was based on an earlier Commission decision which had been sustained as not unreasonable in *Louisiana & P. B. Ry. Co.* v. *United States*, 257 U. S. 114, 118. Despite this finding this element has not been excluded from the carrier's cost of service, either in the cost studies of the respondents or those of the Commission's experts.

In its final report the Commission, commenting on allocation of plant and carrier service made by its experts, says at page 427 (R. 116):

> The Brimstone explains that the consumption of substantially twice the amount of fuel oil in 1923 as in 1922 was caused by the additional intraplant service it performed in 1923. From this explanation it would

appear that about one-half of the service performed was intraplant instead of the small portion assigned by our experts, and that the cost of handling the cars to and from the two connections should be materially reduced from that shown by them.

(b) The allowance for maintenance of leased track was liberal

Appellant's brief, page 49, charges that the Commission excluded from the Brimstone's operating expenses for the year 1923 the actual costs paid by it for the maintenance of 2.76 miles of track used in its common carrier operations and substituted therefor an arbitrary estimate of what, in its opinion, that maintenance cost should have been.

The three pages of discussion devoted to this item in the Commission's report disprove the charge of arbitrariness. The evidence upon which the Commission acted and its reasoning are there fully set forth and call for no elaboration. (R. 104–107.) However, in refutation of appellant's apparent belief that the Commission was in duty bound to accept the amount charged on the Brimstone's books because they were actual costs paid under agreement for the maintenance work performed by the sulphur company, we call attention to the fact that under the divisions paragraph, sec. 15(6), it is the duty of the Commission to give consideration to economy in operation and that the Act as a whole and decisions of this court consider that a carrier is entitled to a fair return on its

property value only in case its operating expenses have been incurred under reasonably economical management.

(c) Annual charges to operating expense for the amortization of the investment were not warranted under the circumstances shown to exist in this case

The Brimstone's claim of right to set up an annual sum of $4,981.58 representing amortization of investment over a period of 21 years is likewise discussed in the Commission's final report. (R. 121–122.) It is there pointed out that if such sum had been set aside the amount at compound interest over the period of years would have exceeded the amount alleged to be necessary to amortize the road; and that virtually the same result had been accomplished by the large dividends paid. The Brimstone's capital stock was of a par value of $200,000 and it paid dividends thereon of 100 per cent in 1914, 60 per cent in 1917, and 40 per cent in 1918. Coupled therewith it must not be forgotten that its notes, issued for the construction of the road and a canal, later abandoned, had been paid off and that at the beginning of the proceeding it had again accumulated a surplus, represented by a credit balance in profit and loss of $165,378.82, or over three-fourths of its capitalization. Except for new property paid for out of earnings, it does not appear that there was ever invested in the company money or assets other than that represented by the paid-off notes and the capital stock. R. 49, 167.)

The Commission's order does not affect surplus or earnings prior to the commencement of the proceeding. It operates only to reduce excessive revenues which continued under the then divisions after the proceeding commenced. Moreover, the divisions prescribed and the adjustments ordered permit of a return of 5¾ per cent to the owners, although it would seem that their original investment had already been repaid.

The Commission's action redresses two wrongs. Because of the close affiliation of the Brimstone and the Sulphur Company the excessive divisions constituted rebates to the proprietary company. *O'Keefe* v. *United States*, 240 U. S. 292, 302; *Ellis* v. *Int. Com. Comm.*, 237 U. S. 434, 445. The departures from the published rates thereby effected is checked by the Commission's order and the further result is to properly distribute between the carriers the revenues received for the carriage of the traffic. In accomplishing the latter, the Commission is not acting as a court, effecting restitution to the stockholders of the other carriers. Its action is purely regulatory and is designed to enforce a division of revenues commensurate with the service rendered by, and the needs of, the participating carriers, to the end that the particular services herein involved may furnish their fair shares of the revenues required by each carrier to maintain an efficient transportation service for the public. The *New England Divisions* decision, supra, referring to the

intended working of the divisions paragraph of the Act, reads, p. 191:

> This, it was hoped, would enable the whole transportation system to be maintained without raising unduly any rate on any line. The provision concerning divisions was, therefore, an integral part of the machinery for distributing the funds expected to be raised by the new rate-fixing sections. It was, indeed, indispensable.

CONCLUSION

The Commission may, when the need for its action is limited to the proper adjusting of a tap-lines division, fix separately that division while regarding the remainder of the joint rates as a joint division or proportion going to the other participating carriers. It follows that in such case the Commission, in giving the due consideration required by the divisions paragraph to the needs, public importance, etc., of the respective parties to the joint rates, should balance those factors with relation to the tap line, on the one hand, and with relation to the other carriers, jointly and not separately considered, on the other hand; and where the result of the Commission's action is to decrease the division of the tap-line and to correspondingly increase the joint proportion of the remaining carriers its primary obligation is to safeguard the public interest in, and fair return of, the industrial carrier through careful consideration given to detailed evidence, while, in so far as the other car-

riers are concerned, the "due" consideration required by the Act in this particular may be complied with by consideration given to less detailed evidence, for their interests and that of the public in their efficient operation has been promoted rather than endangered by the action taken.

These requirements, having been fully met in the instant case, the Brimstone can not urge, either on its own or the public's behalf, that more detailed consideration should have been given to the needs and public importance of the remaining carriers. Its maximum right is its fair return. The public interest in its efficient operation was safeguarded by detailed evidence in respect of its operations. The public interest in the efficient operation of the remaining carriers was promoted by an increased joint proportion. The public's only other interest would be that of lower rates, if upon closer analysis that increased proportion had proved to be more than adequate for the service rendered by those remaining carriers, thereby indicating that the whole given sum presented for division amounted in fact to more than a reasonable rate. But the reasonableness of the joint rate itself is not in issue in a supplemental divisions proceeding and the duty imposed upon the Commission does not extend beyond the need for its action.

As a condition precedent to the adjustment of divisions back to the commencement of a proceed-

ing, the Act requires that the joint rates must have been "established pursuant to a finding or order of the Commission." The joint rates here involved were admittedly established by the carriers pursuant to authority or permission contained in findings of the Commission rendered in *Ex Parte 74* and *Reduced Rates, 1922*, thereby strictly conforming to the letter of the Act. The Act did not require that they be established in the sense of ordered. It significantly permitted that they be established pursuant to finding as well as order of the Commission. Furthermore, the divisions paragraph must be read with particular reference to that other paragraph added by the Transportation Act, 1920, namely, paragraph (2) of section 15a. That paragraph provides for the adjustment of rates based upon the aggregate needs of the carriers as a whole or as a whole in rate groups. Such uniform adjustment of rates is a practical necessity, but rates so adjusted, while providing for average needs, disregard for the moment the needs of the individual carrier. It is left for those individual needs to be separately cared for, and particularly through the Commission's authority to fix divisions. Theoretically the distribution of revenues as between the carriers so provided for should take place contemporaneously with the effective date of the joint rates, but in practice delay is inevitable except in the smaller proceedings in-

volving specific joint rates. The authority to adjust divisions back to the commencement of a division proceeding is obviously conferred to offset in a measure such delay, and, as said, has especial reference to divisions of such joint rates as have been established in just such general rate-group proceedings as *Ex Parte 74*, particularly since it must have been foreseen that the innumerable divisions involved in general rate proceedings could not as a practical matter be fixed in the one proceeding.

The payments of excess income made by appellants under the recapture clause were based on its own unadjusted operating figures and estimate of property value, and not, as required by the Act, upon value determined by the Commission. They are therefore tentative payments subject to readjustment in accordance with findings of the Commission after recapture proceedings have been held. Since they are in no sense final and since recapture only operates against excess income actually earned by the carrier, no grounds exist for the assumption that those tentative payments will not be returned or readjusted in accordance with the amount of excess income, if any, which may be found to have been earned under the divisions as now adjusted by the Commission.

Appellant's claim that the divisions allowed deny it a fair return is discredited by the large amount of evidence in the record bearing upon this issue

and the painstaking consideration which the Commission's reports show was given thereto. Where, as in this case, a confusing of carrier and plant service obtains the determination of what is or what is not a fair return is not susceptible to the exact mathematical proof attempted by appellant. The chief difficulty confronting the Commission was that in respect of properly apportioning costs as between carrier and plant service. The report shows that appellant was liberally treated in the adjustments so necessitated.

The right to amortize investment in a public utility does not exist where, as in this case, through excessive compensation exacted for service rendered, the owners have already received back their investment, as evidenced by the discharge of all debt contracted in construction, the declaration within the course of a few years of dividends amounting to 200 per cent upon a capitalization that represented the only paid-in investment and a surplus within two years thereafter accumulated equaling more than three-fourths of that investment.

The Commission's action accomplishes two results, in that it not only makes proper distribution of revenues from joint rates in the interest of efficient transportation at reasonable charge by all participating carriers but it also prevents the departures from published rates now being effected through the device of excessive divisions allowed to a shipper-owned carrier.

We respectfully submit that the decree of the District Court should be affirmed.

DANIEL W. KNOWLTON,
E. M. REIDY,
For Interstate Commerce Commission.

P. J. FARRELL,
Of Counsel.

○

Cord.

SUPREME COURT OF THE UNITED STATES.

No. 240.—October Term, 1927.

Brimstone Railroad and Canal Company, Appellant, *vs.* The United States of America, Louisiana Western Railroad Company, Kansas City Southern Railway Company, and Interstate Commerce Commission, Appellees.	Appeal from the District Court of the United States for the Western District of Louisiana.

[February 20, 1928.]

Mr. Justice McReynolds delivered the opinion of the Court.

Appellant seeks annulment of an Interstate Commerce Commission order, entered December 14, 1925, which designated the divisions it might thereafter receive from agreed joint rates and required readjustment of divisions received subsequent to August 1, 1921, when the investigation began.

The Court below dismissed the bill. Two of the objections to the order, there advanced, will be considered.

1. The Commission failed to investigate or determine the reasonableness or justness of the divisions, or whether they were unjust, unreasonable, inequitable, or unduly preferential or prejudicial, as between the carriers; also failed to consider whether the circumstances entitled one to a greater or less proportion than another of the joint rates, as commanded by Section 15(6), Transportation Act, 1920.

2. The joint rates were agreed upon by the parties and not "established pursuant to any finding or order" of the Commission, within Section 15(6), Transportation Act, 1920. Consequently, the Commission had no power to require adjustments for any period prior to the final order.

Section 1(4) Transportation Act, 1920, directs common carriers to establish through routes, reasonable and equitable rates, fares

and charges; also to establish divisions of joint rates just, reasonable and equitable as between the participants, which shall not unduly prefer or prejudice any of them.

Section 15(1) empowers the Commission whenever, after full hearing, it shall find any rate charged by a carrier is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential, or prejudicial, or otherwise in violation of this Act, to determine and prescribe the just and reasonable rate thereafter to be observed, and to make an order requiring the carrier to cease and desist from such violation.

Section 15(3) provides that "the Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing," establish joint rates, "and the divisions of such rates, fares, or charges as hereinafter provided."

Section 15(6)—

> "Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway

property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."

Appellant owns and operates a railroad ten miles long in southwestern Louisiana, is a common carrier of freight only, and makes interchanges with lines of the Southern Pacific† and Kansas City Southern. Except five shares, its capital stock—$200,000—is owned by Union Sulphur Company, which operates mines near its line and consigns and receives over ninety per centum of the property moving thereon. Prior to 1920 appellant and connecting carriers established through rates and divisions by agreements. These were modified as permitted or suggested in Ex Parte 74 (1920) 58 I. C. C. 220, and Matter of Reduced Rates (1922) 68 I. C. C. 676.

In Ex Parte 74, the Commission considered applications under section 15a,* Transportation Act, 1920, for authority generally to increase rates so that carriers as a whole might earn a fair return. It found, (July 29, 1920, 58 I. C. C. 220):

". . . The following percentage increases in the charges for freight service, including switching and special services,

†The lines of the Louisiana Western Railroad are part of the Southern Pacific System.

*Transportation Act, 1920—

Sec. 15a [Added February 28, 1920]

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

together with the other increases hereinbefore approved, would under present conditions result in rates not unreasonable in the aggregate under section 1 of the act and would enable the carriers in the respective groups, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition: eastern group, 40 per cent; southern group, 25 per cent; western group, 35 per cent; Mountain-Pacific group, 25 per cent.

"After carefully considering the situation we find that with the exceptions hereinafter noted general percentage increases made to fit the needs of the groups of lines serving each of the four groups must be considered for present purposes the most practicable. This conclusion is without prejudice to any subsequent finding in individual situations."

And it accordingly authorized general increases as specified "in the rates, fares and charges of railroads within the continental United States." It did not approve or require the adoption or maintenance of any particular rate.

In the Matter of Reduced Rates, (May 16, 1922, 68 I. C. C. 676)—instituted to determine whether further general reductions might be required under section 1, also what would constitute fair return under section 15a(3)—after referring to the authorized increases of 1920, the Commission found that 5.75 per centum would be fair thereafter and would result if formerly authorized rates were reduced by specified percentages. The order was that carriers should promptly report "whether the findings herein will be carried into effect without formal order or orders by us." It did not require the adoption or maintenance of any rate, nor was any particular rate approved.

August 1, 1921, the Commission began "an investigation into and concerning the justness, reasonableness, and equitableness of the divisions received by the Brimstone Railroad & Canal Company out of the joint rates applicable to the transportation of property." It ordered "that the Brimstone Railroad and Canal

Company, the Southern Pacific Company and The Kansas City Southern Railway Company be and they hereby are made respondents to this proceeding."

Testimony was taken relative to ownership and organization of the Brimstone Company; its relation to Union Sulphur Company; its operating and financial condition, including dividends, surplus, and character of service performed; volume of road-building material carried for Parish purposes; establishment by United States Railroad Administration of divisions with connecting lines, with factors considered in connection therewith; comparison between the questioned divisions and those received by other lines in the same territory; also value of operating property, including cost of reproduction.

The Commission's first report—April 4, 1922—declared the Brimstone Company a common carrier subject to the interstate commerce act entitled to participate in joint rates, or have its charges absorbed under appropriate tariff provisions. And further:

> "The divisions to the Brimstone should produce no more than an amount sufficient to cover the cost of its service and a fair return upon the property held for and used in the service of transportation. We conclude that the facts of record, including the dividends paid by the Brimstone in past years and the accumulated credit balance to profit and loss, indicate divisions to the Brimstone which are disproportionate, in view of the service rendered, and are tantamount to a rebate to the proprietary company.
>
> "We find that the divisions of joint rates now received by the Brimstone from the two other respondents on interstate traffic are, and for the future will be unjust, unreasonable, inequitable, and to the extent that they exceed or may exceed the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, are excessive, and, in effect, amount to a rebate to the proprietary company. It does not necessarily follow that reasonable and equitable divisions to the Brimstone should be on the maximum basis.
>
> "The record will be held open for a period of ninety days from the date of service of this report, during which respondents will be expected to make the necessary cost studies for

the purpose of arriving at reasonable divisions to the Brimstone."

The subsequent studies related only to the Brimstone Company; they did not extend at all to connecting carriers. The Commission (88 I. C. C. 58, March 10, 1924) said they were "intended to develop the average cost, including return on investment, of moving loaded cars to and from the Southern Pacific and Kansas City Southern." No studies were made or evidence taken concerning efficiency of Southern Pacific and Kansas City Southern lines, amount of revenue required to pay their respective operating expenses, taxes, and fair return upon their property, or the public importance of services performed by them, or any other fact or circumstance (except as shown above) which ordinarily, without regard to the mileage haul, would entitle them to a greater or less proportion of the joint rate. Section 15(6).

March 10, 1924, a second report and order prescribed what the Brimstone Company might thereafter receive from joint rates and ordered readjustment of divisions received after August 1, 1921. No change was directed in the joint rates or finding made relevant to their justness, nor was there any pronouncement concerning apportionments amongst other carriers. The Commission said:—

"Based upon the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, we find that during the period from August 1, 1921, to but not including July 1, 1922, just, reasonable and equitable divisions to the Brimstone would have been: (Here follows certain specific divisions) . . ."

"We further find that on and after July 1, 1922, just, reasonable and equitable divisions to the Brimstone were, are and for the future will be: (Here follows certain specific divisions) . . . ."

"We further find that the divisions received by the Brimstone should be adjusted on a basis not in excess of the charges above found just, reasonable and equitable during the periods named."

On December 14, 1925, a final report and order reaffirmed the order of March 10, 1924 with some modifications (presently unimportant) in amounts allowed the Brimstone Company from the joint rates.

The Commission evidently undertook to deprive the Brimstone Company of receipts supposed to exceed a fair return on its property and award the same to connecting carriers without evidence tending to show they were in need or had or would receive more or less than a fair return from agreed divisions, or that the joint rates themselves were unfair and unjust, or that the agreed divisions were "unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers."

Counsel suggest that in addition to facts revealed by studies of the Brimstone Company's affairs, the Commission did consider existing division sheets of joint rates, volume and distribution of traffic, past division sheets, divisions accorded to the Brimstone Company by the Federal Director-General, also testimony showing competition controlled the agreed divisions. But the very definite command of Section 15(6) required more than that.

Both parties rely upon *New England Divisions Case*, 261 U. S. 184, and *United States* v. *Abilene & Southern Ry. Co.* 265 U. S. 274.

The first involved an order granting larger divisions to New England roads. We there recognized the necessity of evidence "typical in character and ample in quantity to justify the findings made in respect to each division of each rate of every carrier," and declared that with such evidence before it the Commission properly proceeded to consider the importance to the public of the weak carriers and directed divisions intended to effectuate the purpose of Congress to insure adequate transportation service for the whole country, by extending aid to them. Nothing in the opinion supports the view that the Commission may take something from one carrier merely because its net revenue appears unduly large and donate this to another demanding nothing and not in need. Cost of service to one carrier is not the only factor to be considered in determining just divisions.

In the second case the Commission undertook to modify existing divisions for the benefit of a weak road. It did not appear that any matters consideration of which was required by Section 15(6) Transportation Act, 1920, had been ignored, but the evidence concerning some of these things had not been properly presented and therefore the order was annulled. It was there said: (284) "Relative cost of service is not the only factor to be considered in determining just divisions." (291) "The power conferred by Congress on the Commission is that of determining, in

respect to each joint rate, what divisions will be just. Evidence of individual rates or divisions, said to be typical of all, affords a basis for a finding as to any one. But averages are apt to be misleading. It cannot be inferred that every existing division of every joint rate is unjust as between particular carriers, because the aggregate result of the movement of the traffic on joint rates appears to be unjust. These aggregate results should properly be taken into consideration by the Commission; but it was not proper to accept them as a substitute for typical evidence as to the individual joint rates and divisions. In the *New England Divisions Case*, tariffs and division sheets were introduced which, in the opinion of the Commission were typical in character, and ample in quantity, to justify the findings made in respect to each division of each rate of every carrier. A like course should have been pursued in the proceeding under review".

The record discloses that before making the challenged order the Commission failed to consider the items definitely specified by Section 15(6). And it must be annulled.

The Court below gave special attention to the second of the above stated objections to the order. This relates only to the retroactive feature. And it approved what we regard as an erroneous view touching readjustments of past divisions announced by the Interstate Commerce Commission in several proceedings. *Pittsburg, etc., Ry. Co.* v. *Pittsburg Company*, 61 I. C. C., decided April 5, 1921; *Western Maryland Ry. Co.* v. *Pennsylvania Railroad Co.*, 69 I. C. C. 703, 707; *New York Dock Ry. Co.* v. *Baltimore & Ohio R. R.* 89 I. C. C. 695; and *Marion & Eastern Ry. Co.* v. *C. & E. I. R. R. Co.*, 96 I. C. C. 402.

Prior to 1920, the interstate commerce act contained the following provisions concerning the readjustments of divisions of rates determined and prescribed by the Commission.

> Sec. 15. That whenever, after full hearing . . . the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, . . . are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maxi-

mum to be charged, . . . and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, . . . *Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the Commission may, after full hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order. . . .*"

An explanation of the meaning of and reasons underlying that part of Section 15 italicized above appears in Morgan & Kingwood Divisions, 40 I. C. C. 509, 510:

"The provision dates back to the time when the Commission, under section 15 of the original act, had no authority to deal with rates except upon formal complaint. It now constitutes a part of that section, as amended, which gives us power to require, after hearing either upon formal complaint or in a proceeding instituted on our own motion, the establishment and maintenance of joint rates lower than the aggregate of the intermediate rates or joint rates already in effect, or proposed by the carriers in tariffs under suspension. It does not come into play until, as a condition precedent, the Commission has made some requirement after full hearing. The reason therefor, as we understand it, is to provide a means of determining which carrier, or to what extent each carrier, shall bear an enforced reduction or participate in an approved increase in the existing or proposed through charge. In other words, the Commission, in creating a joint rate or in reducing a joint rate below what had been established voluntarily or is proposed by the carriers, having brought about a situation different from that as to which their agreement applied and not in contemplation when the agreement was made, is to have the power to complete what it has undertaken, in case the carriers themselves do not find it possible to agree upon the divisions of the new rate."

"The language of the act [1917] seemed to indicate that the authority was to be exercised only when the parties failed to agree

among themselves, and only in supplement to some order fixing the rates." *New England Divisions Case*, 261 U. S. 194.

The occasion for the changes incorporated in Section 15(6)—Act 1920—were pointed out before the House Committee by Interstate Commerce Commissioner Clark, July 16, 1919 (House Hearings, Return of Railroads, etc., Vol. 1, page 29). He said—

> "There has been a good deal of difference of opinion, both inside and outside of the commission, as to its powers under the present act. The act now authorizes the commission to establish joint rates and says that if the carriers are not able to agree on a division of the rates so prescribed, the commission may determine those divisions and its decision relative thereto shall become effective as a part of the original order and as of the date upon which the rates became effective. But there have come up questions as to divisions of rates which had not been prescribed by the commission and which had become unsatisfactory to one or possibly more than one carrier. The commission originally held that it did not have jurisdiction to prescribe the divisions of a joint rate that had not been prescribed by it. [Morgantown & Kingwood Divisions, supra] Thereafter, the dissatisfied carrier could bring that question at issue by filing a revocation of its concurrence in the rates, or if it happened to be a carrier that published the rates, by filing a cancellation of them. That was frequently protested, often suspended by the commission, and upon hearing it developed that the only difficulty was their differences as to divisions of rates. Requiring them by order to continue the rates was, in effect, establishing those rates as joint rates, and we thereupon proceeded to prescribe the divisions, if they could not agree.
>
> "Later, by a majority vote, the commission decided that it had power to prescribe the divisions, even if it had not prescribed the rates; [Morgantown & Kingwood Division, 49 I. C. C. 540] but that has not as yet come to rest through any final adjudication.
>
> "Under this amendment the commission would be authorized to prescribe the divisions of the joint rates, fares, and charges as between the carriers, whether it prescribed the rates or not, and it is provided that if it be a rate, fare, or

charge that has been prescribed by the commission, it may then, by order, make its division of that rate retroactive to the date upon which the rate prescribed by it became effective; but as to rates not prescribed by the commission, its order prescribing the divisions of the rate would be effective only from the effective date of the order."

Reporting in behalf of the House Committee—(Nov. 10, 1919, H. R. Vol. 2, Reports on Public Bills)—Chairman Esch said:—

"Section 417 amends section 15 of the commerce act so as to give the commission power not only to fix the maximum rate, but to fix the particular rate to be charged, or the maximum, or the minimum, or the maximum and minimum. . . .

"The amendment also increases the powers of the commission in regard to making of through routes and joint rates, authorizing it to prescribe the joint rate or the maximum, or the minimum, or the maximum and minimum. The commission is authorized to prescribe just and reasonable divisions of joint rates among the several carriers and where the joint rate was fixed by the commission and the divisions are found to have been unjust, the commission may determine what would have been the just division thereof, and require adjustment to be made."

Section 15(6) should be construed in the light of the recognized difficulties. Under the earlier act a clear distinction was made between joint rates "agreed upon" and those "determined and prescribed" by the Commission after full hearing "to be thereafter observed." The Commission had power to declare proper divisions of those in the latter category by order "which shall take effect as part of the original order"—that is from the date the rate was prescribed. Whether it could determine divisions of agreed rates for the future was not clear; but certainly it could not require readjustments of divisions of such rates for past periods. Morgantown & Kingwood Divisions, 40 I. C. C. 509, 49 I. C. C. 540, 551. Section 15(6) established the right to prescribe future divisions of agreed rates, but we think the studied purpose was to grant no power to require readjustments of past receipts from agreed joint rates. Theretofore power in respect of past divisions existed only when rates had been determined and prescribed after full hearing—that is where the commission had passed upon the

reasonableness of the rate and required observance. Obviously a carrier may have assented to a through rate only because of the divisions accorded to it: to permit the Commission to change this arrangement as to past transactions would be exceedingly harsh if not wholly unreasonable. Ordinarily, divisions of a particular rate are not of public interest if the rate itself is reasonable. Probably aware of hardships under the old rule, the new act shortened the time during which readjustment might be required—limited its beginning to the commencement of investigation or filing of complaint.

In support of the retroactive provision of the present order counsel say that joint rates between the Brimstone Company and connecting carriers were made under authority of Ex Parte 74, 58 I. C. C. 220, and Matter of Reduced Rates, 68 I. C. C. 676, and therefore were "established pursuant to a finding or order of the Commission." But mere general permission or suggestion concerning rates for all carriers, without consideration of the reasonableness of any particular rate, is not the "finding or order" referred to by Section 15(6). We think that refers to one which, after full hearing, determined and prescribed a rate thereafter to be observed. The contrary view would place substantially all presently existing rates in the class with particular rates established by order of the Commission after full hearing, subject them to retroactive adjustments, and thus destroy the practical value of the distinction which Congress carefully preserved.

The power to require readjustments for the past is drastic. It may reasonably exist in cases where the particular rate has been approved by the Commission after full hearing: it ought not to be extended so as to permit unreasonably harsh action without very plain words. The general findings and permission of Ex Parte 74 and Matter of Reduced Rates did not approve or fix any particular rate and certainly did not determine and prescribe the rates divisions of which are here under consideration. Neither case approved "any specific rate as reasonable in itself or as properly adjusted with respect to other rates nor did it justify in advance any rate which might be published as a result thereof." In them the Commission was dealing with the whole body of rates throughout the country—were looking at the general level of all rates and the propriety of the rates to which the Brimstone Company was party was not the subject of particular investigation or consideration.

See Morgantown & Kingwood Divisions, 40 I. C. C. 511; *Globe Soap Co.* v. *A. & S. Ry. Co.*, 40 I. C. C. 121; *Steel & Tube Co.* v. *Director General*, 61 I. C. C. 526.

Section 15(1) Transportation Act, 1920, authorizes the Commission, after full hearing, to determine and prescribe joint rates to be thereafter observed. Section 15 (3) permits the Commission, after full hearing, to establish joint rates "and the divisions of such rates, fares or charges as hereinafter provided." And Section 15 (6) authorizes readjustments of divisions already received only when the joint rate was established pursuant to a finding or order of the Commission. Such finding or order must have been under Section 15(1) or (3)—after full hearing in respect to the specific rate. This construction will insure compliance with the purpose of Congress by requiring the Commission, upon full hearing, to pass upon the particular rate before divisions for the past can be directed. Mere permission to increase or diminish all rates according to the general needs of carriers throughout the country is not enough.

The decree below must be reversed. The cause will be remanded there for further proceedings in conformity with this opinion.

Reversed.

Mr. Justice HOLMES and Mr. Justice BRANDEIS dissent.

A true copy.

Test:

Clerk, Supreme Court, U. S.